A PROPOSED PRELIMINARY DRAFT UNIFORM LAW ON ARBITRATION

I.

The widespread use of arbitration today, is shown by the multitude and diversity of laws enacted on the subject. Professor David of Grenoble has conveniently collected, translated into French, the texts of eight different laws on Arbitration.[1] They comprise articles 1025 to 1048 of the German Code of Civil procedure, the English Arbitration Act 1889, articles 1820 and 1821 of the Spanish Civil Code together with articles 63(10) and (11), 487, and 790 to 839 of the law of civil procedure, the United States Arbitration Act of 1925, articles 1003 to 1028 of the French code of civil procedure together with the law of 31st December 1925, articles 8 to 34 of the Italian Code of Civil Procedure with the modified article 941, articles 486 to 514 of the Polish Code of civil Procedure, and the Swedish Law of 14th June 1929. These texts represents the laws as they stood in 1932 when, under the aegis of the Rome Institute for the Unification of Private Law, of the League of Nations, Professor David published his "Rapport sur l'arbitrage conventionnel en droit privé." (U.D.P. Etudes III S.D.N. 1932—C.D. 1932 290 pp.) This excellent report was the preliminary survey which made it possible for the Institute to convoke a committee on Arbitration in 1933. This committee, consisting of members drawn from France, Italy, Poland, Sweden and Great Britain, worked under the Chairmanship of M.d'Amelio, First President of the Italian Court of Cassation, and produced, in 1935, a draft Uniform Law on Arbitration the text of which is set out below. This preliminary draft is not by any means final and definite, either as to form or content. It is however now under consideration in interested circles in different countries that are members of the League of Nations, and this article is published to give a general idea of the lines upon which the committee will work in preparing the text. In due course, it is hoped to convene, through the offices of the League, a full conference to discuss and amend the definite text of the draft, after which the text, or what is left of it, may form the basis for an international convention on Arbitration sponsored by the League of Nations,

[1] RUSSELL on ARBITRATION, 12th ed., contains at pp. 532 to 557, an English translation of the French,German and Italian laws, with a short account of the law in 17 other countries as well as the U.S. Arbitration Act.

of a more ambitious and complete nature than either that of 1923, which aimed at securing legal recognition of the validity of the arbitration clause, or that of 1927 which aimed at producing uniform rules for the execution of foreign awards. In the countries that have ratified these Conventions there has then, already been some progress towards uniformity in matters of arbitration, but the conventions leave many points open. Suffice it to mention that the Convention of 1923 leaves the question of the form of the arbitral convention to be settled by the national laws of each signatory State, while the Convention of 1927, which was embodied in the English Arbitration (Foreign Awards) Act 1930 is, according to Professor David (*op. cit.*, p. 9), open to the grave criticism that it is very difficult for one state to permit the execution in its territory of awards made under the provisions of some foreign system of law which does not offer either the same safeguards or guarantees as its own, and which may be based on quite other legal principles. Clearly if a uniform law were universally adopted, the question of the form of the arbitral convention and the principles upon which arbitrators are to act would be settled once and for all, at any rate to a much greater extent than they are now. In this way the criticisms of the present system might be, to a great extent, disposed of. The present draft is an attempt, however imperfect, to supply what is thought to be a real need. But, in so far as the draft law is not adopted, the existing Conventions will remain in full vigour; if however the present draft could be universally adopted, the existing conventions would become superfluous. Until then, the uniform law would only be applied in those states adopting it.

The project is a bold one, but the subject is sufficiently important to merit a frontal attack. Businessmen have long realised the advantages of the speedy and secret settlement of disputes that arbitration affords them when properly conducted by experienced arbitrators. Indeed, the International Chamber of Commerce, the London Court of Arbitration, the "Deutscher Ausschuss fuer Schiedsgerichtwesen," and the American Arbitration Association, have all issued elaborate rules for the conduct of arbitrations. It is not the intention of the present preliminary draft to supplant these detailed rules. The aim of the draft is to prevent the conflict of laws. In spite of the existence of collections of rules governing the conduct of arbitration which can be easily incorporated in contracts, there are many occasions where an arbitration clause or agreement may be defeated by action taken in a court of law. Some statutes

only grudgingly permit arbitration at all, others impose stringent conditions with regard to the form and contents of a submission which are a constant snare to the unwary. A uniform law on arbitration, which can be widely adopted in international arbitrations, is the obvious way to assure that persons who enter into an arbitral convention may have no misgivings about the validity thereof, or concerning the rules of law applicable thereto. This has been attempted in the proposed draft, to which it is hoped the reader will turn as he peruses this article.

II.

We may for the moment, leave aside the general provisions of articles 1 to 3 dealing with the scope of the law, articles 25 to 28 relating to the execution of the award, and articles 36 to 39 which settle the court competent to deal with the arbitration and with one or two general matters, because these provisions raise questions of private international law which can be conveniently discussed separately. Let us run through the more formal parts of the Draft. It will be seen that articles 4-7 regulate the terms and form of the submission to arbitration, but the requirement of writing and signature in clause 4 is not intended to exclude the possibility of an arbitration clause being included as a term in a lease or a contract. The proviso to article 4 introduces a case where a party may be estopped from taking advantage of lack of writing. Article 5, is not aimed at questions of duress or undue influence in the formation of a contract of arbitration, but rather at those terms in an otherwise valid submission which give one party an undue advantage, for example in the nomination of an arbitrator. Article 6 enables a court to refuse its aid to arbitral proceedings, in a proper case, without necessarily declaring the submission void in respect of future disputes that may arise under it. Sub-clause (c) resembles s. 14(2) of the English Arbitration Act of 1934, in that it would ensure that in charges of serious fraud that the accused would obtain trial by jury.

Article 7, again refers to estoppel, and the second paragraph as Professor David has pointed out (*Arbitration*, Document 15, p. 9), was inserted in the hope of settling certain doubts that had arisen in the American courts with regard to the effect of claiming interlocutory relief.

Articles 8-11 relate to the constitution of the Arbitral tribunal, and are designed to apply where there is no contrary term in the arbitration agreement or the rules of any Institution

to which that agreement refers. It was thought fit to provide for the appointment of a president of the arbitral tribunal rather than to adopt the English system of appointing an umpire as provided by ss. 4 and 5 of the Act of 1934. The distinction between an arbitrator designated by name by virtue of some personal qualification, and an arbitrator not so designated made in article 11, is important where an arbitration has been referred to a certain number of unspecified members of a recognised body such as a Chamber of Commerce. To allow a submission to be revoked by the death of any such arbitrator would be absurd when there clearly exist other persons who, being members of the same body, could easily replace him. The right to challenge an arbitrator for partiality was deliberatedly restricted to challenging a third arbitrator. The drafting committee recognized the force of the observation of the Mackinnon Committee, whose report preceded the English Act of 1934, that in practice, if not in theory, arbitrators nominated by the parties to a dispute are apt to regard themselves as advocates for those appointing them, and are inevitably partial. A third arbitrator who is not so appointed must avoid all suspicion of partiality, and the parties can insist that he do so.

The English practice under paragraph (c) of the first schedule to the Arbitration Act 1889, which enables arbitrators to extend the time for the making of their submission has not been followed in article 15 which requires the award to be made within six months, and only permits an extension of the time to be granted by the parties to the dispute or the court.

Articles 16 to 24 inclusive, deal with the procedure in the arbitration and the award. So far as possible the parties are to regulate the procedure themselves, but article 17 is careful to give an absolute right to each party to be represented or assisted by others, though by article 18 each party has a right to appear in person only if the right has not been excluded by agreement in the submission. Article 19 does not preclude the appearance of legal experts, but, according to the view of the drafting committee expressed after the point had been taken by the English member, neither this nor any other provision of the proposed law is designed to permit the English system of obtaining a decision of the High Court on a case stated. In order to retain the "case stated" an express reservation would have to be made by the British Government in any Convention which did not radically alter the present draft. (See also David, *Etude III*, doct. 15 and 19, p. 16). Article 20 refers to such

formalities as the summoning of witnesses and administering oaths which in some countries require the assistance of the Court. The object of article 21 is to prevent frivolous objections from delaying the arbitration. The President of the arbitral tribunal is given important powers by article 22, but of course his powers are not as complete as those of the English umpire who may have to decide the whole of the subject of the dispute. It will be recalled that under the English Act of 1934 s. 5, an umpire must be appointed immediately after the arbitrators have been appointed when the reference is to two arbitrators. The committee did not feel prepared to adopt this system. Articles 23 and 24 are straightforward and do not call for comment.

From article 29 to article 34 the draft law deals with the setting aside of an arbitral award and will be mentioned again later on. A correct inference from article 30 would be that arbitrators are not bound to give reasons for their decision, and that they are not bound by legal rules of evidence in the absence of an express stipulation. English lawyers will no doubt look askance at the latter point, but it may be that businessmen are somewhat less impressed by the need for the observance of the technical rules of evidence of the common law. Article 31 gives the court useful supervisory powers over the award. The fraud referred to in article 32 only relates to the fraud of one of the parties, in obtaining the award, or of course of his agent, it does not refer to fraud on the part of the arbitrators which is covered by article 29. Articles 33 and 34 regulate to setting aside of the award and the rule of estoppel is again introduced. Costs expenses and fees are to be settled by the arbitrators according to article 35, in so far as the parties have not settled the matter beforehand in the submission and of course in these matters the parties may submit themselves beforehand to the rules of a Chamber of commerce or any other similar institution.

III.

Let us now consider the remaining articles which are of particular interest from the international point of view. In a recent article in the *New York Law Journal*, 1934, p. 757, Professor Lorenzen writes:

> The only proper and legitimate position is that the difference in the legislation on the subject of arbitration is one relating to the substantive rights of the parties, and these contracts should be governed in the conflict of laws by their proper law, subject to the rules of Public Policy of the forum.

And again at p. 759;

> If an arbitration agreement provides that the arbitration shall be governed by the law of a particular State or country, other than the law which would normally apply, the courts of the forum should give effect to the intention of the parties provided the law chosen has reasonable connexion with the facts and is not opposed to the public policy of the forum.

These extracts may be adopted as fair statements of the English point of view, and they contain the root principles of the present draft international uniform law. According to article 2, the uniform law shall apply when the parties to a submission have so expressed their intention. That intention may incidentally, be implied from a reference to the rules of any institution that has adopted the uniform law. Where the parties to a submission have not so expressed their intention, then the law is only intended to be automatically applicable in the case specified in article 1, *i.e.*, when the parties to the arbitration have their habitual residences in different countries. The test of residence at the date of the signature of the submission, was adopted as being a much clearer and more readily ascertainable conceptions term than that of domicile, the meaning of which varies a great deal from country to country. The last clause of article 1, then, expressly permits the parties to regulate their submission according to some other law other than the uniform law, provided they specify what it is to be, and thus the draft attempts to prevent parties to an international arbitration from leaving the proper law of the contract in doubt, in cases where it is likely that there may be a question of the conflict of laws. Corporations and associations of a quasi-corporate character, and their branches, have always caused special difficulties in private international law and, as most commercial contracts are now made by such bodies, it was thought worth while expressly to define their position.

A corporation, or an association, is deemed, for the purpose of this article, to have its residence at the place of the branch actually entering into the submission. This in practice, should be easily ascertainable. Under these rules, the nationality of the parties becomes irrelevant in connexion with the determination of the proper law of the contract. When the uniform law is adopted by any country as part of its laws, then it will apply in all matters coming before the court of that country in the circumstances set out in articles 1 and 2. The draft creates a new *jus gentium* relating to arbitration to which parties may refer, and which will be applied in the countries adopting it where there is no express reference to another system of law.

There is at present no objection in English law to a reference to a foreign court *The Cap Blanco*, [1913] P. 130, but it must be remembered, as Professor David has pointed out, that the stipulation permitting parties to a submission expressly to refer to some foreign system of law, must be read in the light of the ordinary rules of private international law. In other words the reference to a third system of law must itself be valid, to exclude to uniform law. As Dr. Cheshire points out in his recent work on private international law (page 183):

> It is not correct, to describe the proper law as being the law which the parties intended to make applicable. Otherwise it would be possible, for instance, for two Englishmen, when making a contract in London to be wholly performed in England ,to stipulate that it should be subject in all respects to the law of Russia. The proper law does not depend upon the intention of the parties *per se*. It may be more accurately described as that system of law with reference to which the contract has in fact been made, or, as Westlake puts it, the system with which the transaction has the most real connexion.

The recent case of *The Torni*, [1932] P. 78, made it clear that legislation of a compulsory nature such as the Hague Rules for the carriage of goods by sea, cannot be excluded by a statement by parties to a bill of lading to which the rules apply that they intend to be bound by some other system of law.

Article 3 of the draft uniform law avoids laying down any general rule on the thorny subject of capacity to submit to arbitration. A realistic view has been taken which recognises that there can only be arbitration in respect of a right over which the party submitting to arbitration is competent to dispose of. Here again, in disputed cases, private international law may have to be prayed in aid in order to decide questions of capacity which may well be governed by foreign law; and it is recognized in England, that foreign law is a question of fact which must be proved anew every time it comes under discussion in an English court, *Lazard Brothers* v. *Midland Bank*, [1933] A.C. 289. This rule applies to arbitrators who may have to inform themselves on foreign law in questions of capacity, by hearing expert evidence. This would be done under article 19 of the Draft.

The vital question of obtaining execution of the arbitrator's award, where it has not been carried out voluntarily by the losing party, is dealt with in articles 25 to 28 inclusive of the draft. These clauses were among the most controversial of the draft, and caused very considerable discussion in the drafting

committee in view of the peculiar formalities required in different countries before an award may be the subject of execution.

It will be recalled that under the Arbitration (Foreign Awards) Act 1930, which gives effect to the international Convention of 1927 so far as England is concerned, a foreign award may be enforced under s. 12 of the Arbitration Act of 1889. Section 12 provides that an award may, "by leave of the Court or a Judge, be enforced in the same manner as a judgement or order to the same effect." Article 25 of the draft uniform law also postulates the necessity for the intervention of a judicial authority before execution, and it expressly provides that an opportunity for lodging objections must be given. The judicial authority referred to is settled by article 37 of the draft which provides that, in default of agreement, leave to execute (exequatur) may be claimed in the place of the defendant's habitual residence, the place where the award has been given, or in any other place where the defendant possesses property capable of execution. Where the draft uniform law has been adopted there should be no difficulty in working out these provisions. If execution is sought in a country where the uniform law has not been adopted then the matter will proceed under the now existing laws and conventions which, as we have seen, will remain intact. While article 37 gives the successful party a wide choice of the places where he may seek leave to enforce his award, this choice is to some extent limited by article 26, Clause (*a*) of which seeks to prevent double execution; clauses (*c*) and (*d*) of the article ensure that the public policy of the country of the execution shall be respected. Clause (*b*) of the article calls for special comment. Leave to execute (exequatur), once given, is sufficient to permit enforcement in any country where the uniform law is in force, without further formality, hence if leave has once been given by a competent court there is no need for a second application for leave in another court, under the draft law as it now stands. This innovation may at first sight seem startling, but it is really only a logical development from the existence of a uniform law designed to have the same effect in all the countries adopting it. No doubt in England the adoption of the uniform law would necessitate the making of some new rules of court to secure identification and translation of the original award and the leave to enforce it, (exequatur), but this would not seem to constitute a grave difficulty. It should be noted that article 27 which enables leave to execute (exequatur) to be refused, refers to the judicial authority to which application may be made under article 37,

and has no reference to the case where execution is actually claimed in one country under article 28, after leave to execute (exequatur) has previously been accorded by competent court of another country. The object of the draft is to get rid of unnecessary formalities as far as possible. Under article 28, when leave to execute (exequatur) has been successfully claimed in one country, and execution is actually sought in another country, the appropriate authority will normally issue execution as of course; but it may refuse execution of the foreign award under the second paragraph of article 28, which attempts to prevent double execution and to safeguard territorial notions of public policy. Here again, in England, appropriate rules of court would be needed to carry out the scheme of the draft.

The second paragraph of article 37 provides that an application to set aside an award must be made in the court of the country where leave to execute it (exequatur), has been claimed. This is an obviously convenient rule in respect of applications to set aside or annul an award made under articles 29 to 32 inclusive. It does not of course touch the matters dealt with by article 26 relating to applications for leave to execute an award, or by article 28 which refers to attempts to execute an award in respect of which leave to execute has already been obtained elsewhere. In article 29, sub-clause 6 refers only to the arbitrators considered collectively. The fact that one of three arbitrators had acted with partiality would not itself, be a ground for setting aside the award. It will be rembered that this view is adopted in article 12(3). The expression "fundamental principles of justice," in article 29(6), refers to what are known in England as "the principles of natural justice," a somewhat controversial expression which at any rate seems to cover those cases where a party has not had notice of proceedings that purport to bind him, or where he has not been given an opportunity of being heard. See Dicey, Conflict of Laws, 5th ed., pp. 456-458. Article 30 represents an attempt to make the English practice of requiring an arbitration to be conducted in accordance with the normal rules of evidence still possible. It has been already explained that the general scheme of the draft is to allow some freedom in matters of evidence, but parties may, if they wish, expressly submit their arbitration to the rules of evidence of any particular country.

Article 36 provides that in default of agreement, applications to court which may be required in respect of matters likely to arise once the arbitral proceeding have begun, shall be made

to the court of the country where the arbitration takes place or, if the arbitration has not actually begun and, for example, the parties are haggling about the nomination of arbitrators, the court shall be that of the defendant's habitual residence. The remaining articles 38 and 39 are of a general character and call for no comment.

IV.

The writer's object in producing this article has been to attempt a discussion from an English point of view, of some of the principles adopted by the committee on arbitration in the hope that readers interested in international arbitrations in private law matters, may be tempted to consider this first tentative draft from their own national point of view and their own personal experience. The framers of the draft and the International Institute for the unification of private law will welcome constructive criticism. They are well aware that the draft is not in its final form, on some points the present draft represents a compromise between very different ideas, and, on many occasions, the draftsmen have sunk personal differences of opinion and preferences in order to produce a uniform law that, it is hoped, may have some chance of being discussed on a ground of mutual understanding by various member states of the League of Nations. The writer at any rate found it an extraordinary engrossing task to discuss in the committee, general principles of law put forward from many different points of view, on their merits, free from the dead hand of binding precedent. That any draft has been produced is largely due to the fact and the untiring labour of Judge d'Amelio, the Chairman of the Committee, and to the disinterested labours of M. David, as well as to the general spirit of co-operation that prevailed in the Committee.

Perhaps Canadian lawyers who must, more than any other body, be familiar with the clash and interaction of French and English legal traditions, will have something vital to offer in the way of criticism and collaboration in this and future attempts to obtain unification of the private law of the world.

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PRELIMINARY DRAFT OF AN INTERNATIONAL LAW ON ARBITRATION.

(N.B.—*This text is open to amendment and is not final.*)

Translation from the French by the writer.

The Scope of the Law

Article 1. The present law shall apply when, at the time a submission to arbitration is signed, the parties thereto have their respective habitual residences in different countries, even if at the time a dispute arises they have their habitual residences in the same country.

If one of the parties is an association or a corporation its habitual residence shall be deemed to be the place of the situation of the establishment that has made the submission, even if such establishment is only a branch.

The nationality of the parties shall not be taken into consideration.

The application of this law may be excluded provided that the parties to a submission shall state that another defined law shall apply.

Article 2. The present law shall also apply when the parties (to a submission) have expressly so provided, or have impliedly so provided, by reference to a definite set of rules.

Article 3. Everyone may submit to arbitration any rights over which he has an unrestricted power of disposition.

A submission of future differences shall only be valid if it relates to disputes arising out of a legal relationship or a contract.

The Submission

Article 4. A submission shall be void, unless entered into in writing and signed by the parties thereto; modifications may be made thereto in the same way.

A submission void under this article shall be rendered operative in relation to any particular difference if it appears from the minutes of evidence of the arbitral proceedings in relation thereto, or from the award in respect thereof, that the parties have appeared before the arbitral tribunal and that by their conduct they have waived their right to rely on such invalidity.

Article 5. A submission shall be void if it contains a term which unduly favours one of the parties. If however the party thereby favoured renounces the benefit of such a term the submission shall not be affected.

Article 6. A submission shall be deprived of any effect in so far as it relates to any given difference, and the court may, even of its own initiative, refuse to give any assistance in the setting up of the arbitral tribunal, and may refuse to stay any legal proceedings in spite of the submission to arbitration:

a) if the interest of some third party renders this imperative; or

b) if the difference is closely connected with litigation which is already pending; or

c) if the difference implies that a criminal act has been committed by one of the parties and that in the interests of justice, or of such party, it appears necessary that the submission be deprived of effect.

Article 7. A party may no longer rely on a submission, in so far as it relates to a particular difference, where he has clearly shown his intention not to rely thereon or not to be bound thereby.

A party shall not be prevented from relying on a submission by the mere fact of his claiming interlocutory assistance to preserve (the subject matter of the difference).

THE ARBITRAL TRIBUNAL

Article 8. The arbitrator or arbitrators may be nominated in the submission itself or after it has been entered into.

If the submission does not state the number and manner of appointing the arbitrators, each party shall nominate an arbitrator.

When an even number of arbitrators has been appointed they shall, before entering on the reference, nominate another arbitrator who shall have the right to preside over the arbitral tribunal. When an odd number of arbitrators has been appointed they shall appoint one of themselves to act as president. In case the arbitrators cannot agree thereon, the president shall be nominated by the court at the request of one the parties.

Article 9. The party who invokes a submission shall state the difference he proposes to submit and, if need be, shall nominate his arbitrator giving notice thereof to the other side and, if necessary, to the person who, by virtue of the submission has the duty of nominating an arbitrator.

Any such notification may be made by registered letter.

Article 10. If the party who has received notice to nominate an arbitrator, or if the person invited to do so, shall not have made the appointment within 15 clear days from the date when such notification would normally have come to hand, the court shall nominate such arbitrator.

Article 11. If an arbitrator not designated by name in the submission, shall die or become incapable of acting, or shall resign, he may be replaced within 15 clear days, in the same way that he was nominated. If an arbitrator not designated by name in the submission is challenged, or if his appointment is revoked, then the duty of appointing a substitute shall devolve on the court.

If the arbitrator who has died or become incapable of acting, or who has resigned, was designated by name in the submission because of his personal qualifications, and the parties to the submission cannot agree upon a substitute, then unless there be an agreement to the contrary, the submission shall be void, except so far as it relates to future differences, provided that, as and when such differences occur, the arbitrator shall be in a position to deal with them.

Article 12. Anyone may be nominated as arbitrator irrespective of his nationality.

An arbitrator may be challenged:

1) when he has not attained his majority;

2) when, because he has been convicted, or is mentally incapable, is ill, absent, or for any other reason he is unable to fulfil his office satisfactorily, or cannot fulfil it within a reasonable time.

The third arbitrator may further be challenged if any circumstances exist capable of casting doubt on his impartiality or independence.

Article 13. A challenge must be addressed by a party to the arbitral tribunal before the award is made, and as soon as such party has become aware of the ground for his challenge.

An appeal lies to the Court from the decision of the arbitral tribunal refusing to accept a challenge. No party may challenge an arbitrator of his own nomination.

Article 14. If an arbitrator having accepted his office, shall unduly delay to fulfil it, the court may, at the request of one of the parties, revoke his appointment.

An arbitrator shall not be discharged by the death of the party who has nominated him.

STEPS IN THE ARBITRATION

Article 15. In the absence of a provision to the contrary, a submission shall become void, as regards any particular difference submitted, if the award is not made within the period of six months from the date when the arbitral tribunal was constituted.

Such period may be extended by the parties to the submission or, where there is some special reason, by the court.

THE PROCEDURE IN THE ARBITRATION

Article 16. The parties shall settle the place of the arbitration and the procedure to be followed by the arbitrators, and if they have not done this before the arbitrators have accepted their appointment the arbitral tribunal itself shall have the right to do so.

Article 17. The president of the arbitral tribunal shall regulate the hearings and direct the debates (before it). He shall provide for the issue of summons and other formal procedural questions. The arbitral tribunal may, notwithstanding a clause to the contrary in the submission, admit the right of a party to be represented or assisted by others.

Article 18. If the submission does not authorise the arbitral tribunal to determine the difference on written evidence only, the arbitral tribunal shall give each party the opportunity of appearing before it and proving his case. For this purpose parties may be summoned by registered letter. If a party fails to appear without legitimate excuse the tribunal may nevertheless proceed to its award.

Article 19. The arbitral tribunal may, even if authorized to proceed only on written evidence, hear witnesses or experts in order to settle the difference.

Article 20. If the arbitral tribunal shall not have the means to direct or carry out an act that it deems necessary, such act may be directed or carried out by a competent authority at the request of one of the parties.

Article 21. The arbitral tribunal may, according to the circumstances of the case, proceed with the conduct of the case and to the award, or may

adjourn the arbitration or the award, even when one of the parties has alleged that the arbitration ought not to take place, or that the arbitral proceedings should be suspended.

THE AWARD

Article 22. The award shall be made by an absolute majority of votes after a session at which all the arbitrators must be present in person. If an absolute majority cannot be obtained the president's vote shall preponderate.

The award shall be reduced to writing and signed by all the arbitrators. The signature of the majority or, in the case where no absolute majority is obtainable, that of the president of the arbitral tribunal shall suffice if the award sets forth the reasons why the signatures of the other arbitrators are lacking.

The award shall indicate the place and date it is made.

Article 23. The arbitral tribunal shall communicate (copies of) the award to the parties to the submission and shall deposit (the original) in the place provided by the submission or, if no such place is indicated therein, at some place to be settled by the arbitral tribunal itself.

Article 24. The arbitral tribunal may, if it can do so without prejudice to the parties to the submission, make a partial award (on some of the differences submitted to it) reserving other differences for a further award.

THE EXECUTION OF THE AWARD

Article 25. An award may be the subject of execution only when it has been declared executory by a judicial authority. Any judicial authority before whom leave to execute is claimed shall, before making its decision, give the parties the opportunity of stating their objections.

Article 26. A judicial authority shall, on its own initiative, refuse leave to execute.

a) if the award has already been satisfied; or

b) if leave to execute has already been accorded in respect of the award in a country where this law is in force; or

c) if the award is contrary to public policy; or

d) if the arbitrators have decided some question that was not capable of being submitted to arbitration according to the law of the place where leave to execute has been claimed, or according to the particular law that governs the submission.

Article 27. A judicial authority may refuse leave to execute if a party cited to appear shows that he has a *prima facie* case for setting aside the award.

If, when a reason for setting aside an award has been invoked, a judicial authority considers nevertheless that it ought to give leave to execute, it may do so on terms, pending proceedings for setting aside the award.

Article 28. When leave has been given to execute an award by a judicial authority of one of the countries in which the present law is in force, the award may be executed in any one of such countries.

Execution shall nevertheless be refused:

a) if the award has already been executed; or

b) if the award is contrary to public policy in the country where execution is claimed; or

c) if the award has been made in respect of some matter which the law of the country where execution is claimed does not permit to be submitted to arbitration.

SETTING ASIDE THE AWARD

Article 29. The award shall be set aside in any of the following cases:

1) When leave to execute it would be refused under art. 26;

2) If there is no valid award, or if the submission ought to have been deprived of effect under art. 6;

3) if the award has been made after the expiration of the period fixed by the parties or by the law;

4) when the award has been given by an irregularly constituted arbitral tribunal, or when a challenge to an arbitrator has been wrongly disallowed;

5) When the arbitral tribunal has exceeded its jurisdiction or its powers; in this case however, the setting aside may be merely partial;

6) If the arbitrators have not conducted the proceedings with impartiality, or if they have acted contrary to the fundamental principles of justice;

7) if the award has not been signed according to the terms of art. 22;

8) When one of the parties has been prejudiced by reason of the award being only a partial one.

Article 30. The award shall also be set aside if, contrary to the express stipulation of the parties, the arbitrators have not given their reasons or have not respected the legal rules relating to the admissibility of evidence or for the determination of the merits of the difference submitted.

Article 31. An award may also be set aside if the arbitral tribunal has failed to give a decision on one of the questions submitted to it. If however the court upholds the award in such a case, it shall be competent to determine the questions left unsettled by the arbitral tribunal if the question is ripe for such determination and one of the parties makes an application for this purpose.

The court may also, on the application of one of the parties, remit the award to the arbitral tribunal in order that it may, in a period fixed by the court, make a supplementary award.

A purely verbal mistake in an award may be corrected by the court.

Article 32. The award shall be set aside if it has been obtained by the fraud of one of the parties to the submission, or if it is based on evidence which has been proved false, or if it has been made in ignorance of some document that is of decisive importance and which the person claiming to avoid the award was unable to produce (at the hearing).

Article 33. An application to set aside an award must be made within a period of sixty clear days from the date that it has been communicated to the party making the application.

In the cases dealt with by art. 32, an application to set aside an award must be made a maximum period of three months from the date of the discovery of the fraud or fresh evidence, it may not be claimed later than three years from the publication of the award.

Article 34. The award cannot be set aside at the instance of a party who is precluded from alleging the cause therefor upon which he relies.

A party shall not be deemed to be precluded from relying on any cause for setting aside the award if, at the moment such cause arose he expressly reserved his rights. The nomination of an arbitrator by a party shall not take away his right to allege the incompetence of the arbitral tribunal.

Costs Expenses and Fees

Article 35. The costs and the expenses of the arbitration, the fees of the arbitrators and the incidence thereof shall be settled in the award.

The arbitral tribunal may however remit the settling of the fees of the arbitrators to the court.

The parties shall be jointly and severally liable for the payment of the fees and expenses of the arbitrators.

The decision relating to such fees and expenses may be attacked by any party independently of the rest of the award.

The Competent Court

Article 36. Any court agreed on by the parties shall be competent to consider the nomination, the challenging, or the revocation of an arbitrator or president of an arbitral tribunal, the extension of the period of the arbitration, or the fees and expenses of the arbitrators.

In case no such court has been agreed on, the competent court shall be that of the place of the arbitration. If the place of the arbitration shall not have been agreed on, the competent court shall be that of the place where the defendant has his habitual residence.

No appeal will lie from the decision of such court.

Article 37. An application for leave to execute an award must be made in the place agreed on by the parties. In case no such agreement has been made, it may be claimed in the place where the defendant has his habitual residence, or in a place where the award has been given, or in any other place where the defendant possesses property capable of being the subject of execution.

An application to set aside an award must be made in the place where leave to execute it has been claimed. If leave to execute has not been claimed or in the cases regulated by art. 32 hereof, the court competent to consider the setting aside of the award shall be that agreed on by the parties, or if no such place has been agreed on, the court of the place where the defendant has his habitual residence.

(The various national laws ruling in the countries where applications are made, shall determine what appeals will lie in respect of applications for leave to execute and to set aside awards).

General Provisions

Article 38. When the various procedural matters referred to in this law have not been otherwise settled, they shall be carried out according to the law of the place where they are required to (be performed).

Article 39. The provisions of this law shall be applied as far as possible when, by virtue of the submission, the duty of the arbitrator is only to settle questions of fact, without deciding the legal consequences thereof.