

Daniel Levy

Les abus de l'arbitrage commercial international



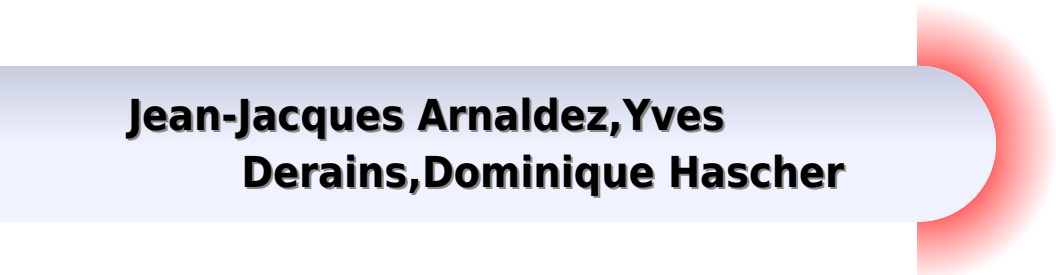
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Les Abus De Larbitrage Commercial International

**Jean-Jacques Arnaldez, Yves
Derains, Dominique Hascher**



Les Abus De L'arbitrage Commercial International:

Les Abus de L'arbitrage Commercial International Levy, 2015 L'Émergence de l'arbitrage commercial international en Amérique latine Claudia Frutos-Peterson, 2003-04-01 Ces dernières années les pays latino américains ont entrepris de grands changements en ce qui concerne la réglementation de l'arbitrage commercial international Ils ont ratifié les principales conventions internationales en la matière modifiant les mécanismes juridiques internes et internationaux de ces pays Cet ouvrage aborde les tapes de la formation d'un droit de l'arbitrage commercial international en Amérique latine et présente les évolutions juridiques qui en ont permis une pratique accrue et en valeur l'efficacité

The Notion of Award in International Commercial Arbitration Giacomo Marchisio, 2016-04-24 International commercial arbitration relies extensively on the possibility of enforcing arbitral decisions against recalcitrant parties Because courts and arbitration laws across the world take contrasting approaches to the definition of awards such enforcement can be problematic especially in the context of awards by consent and the recent development known as emergency arbitration In this timely and ground breaking book a young arbitration scholar takes us through the difficulties of defining the notion of arbitral award with a rare combination of theoretical awareness and attention to the procedural requirements of arbitral practice In a framework using a comparative analysis of common law and civil law jurisdictions specifically England and France and how each has regulated in different ways the equilibria between state justice and arbitral justice and comparing each with the UNCITRAL Model Law the book addresses such issues as the following the judicialization of arbitration different models of arbitral adjudication and their impact on the notion of award what an award needs to contain to be enforceable awards on competence awards by consent and awards ante causam The author employs a methodology that views arbitration as providing an institution for administering justice rather than as a purely contractual creature To this end rules of arbitral institutions particularly the International Chamber of Commerce are examined closely for their implications on what an award means As a fresh look at the arbitral award by placing it in a broader context than is usually found this book allows for a greater understanding of the functioning of international commercial arbitration It is sure to become an international reference and as such will be welcomed by arbitrators practitioners at global law firms companies doing transnational business interested academics and international arbitration centres in emerging markets Les abus de l'arbitrage commercial international Daniel

Levy, 2015-05-01 L'émergence d'un système autonome d'arbitrage commercial international autorise les juridictions étatiques interpréter la procédure internationale soit selon des normes nationales soit en se détachant de toute influence étatique Mais le manque de dialogue entre ces juridictions permet aux parties de tirer avantage de ce décalage jurisprudentiel par le biais de procédures parallèles injonctions annulations reconnaissances litispendance res judicata etc L'auteur propose l'abus de droit comme le critère le plus adapté pour identifier et sanctionner ces manœuvres seul permettant d'organiser et de légitimer un ordre juridique arbitral autonome mais pas isol

Collection of ICC Arbitral Awards 2016-2020 Jean-Jacques

Arnaldez, Yves Derains, Dominique T. Hascher, 2022-02-28 The Collection of ICC Arbitral Awards 2016 2020 contains extracts of cases handled by the ICC Court of Arbitration one of the world's most respected arbitral institutions This most recent collection supplements seven previous and successful volumes containing awards from the period 1974 to 2015 This collection is a practical reference tool containing three types of useful indexes incorporating information from all three volumes a consolidated analytical table in both English and French contains extensive cross references based on the terminology used in awards and case notes a chronological index lists the awards a keyword index also provided in both languages allows the reader to locate the material of interest quickly and easily In addition to providing a wealth of information in a highly accessible manner this book includes case notes and expert commentaries on the awards This publication is an indispensable reference work for anyone interested in international arbitration and in the reasoning of international arbitrators on the interpretation and application of contractual clauses international conventions and the law of international trade It is invaluable to both scholars and practitioners involved in the drafting and negotiation of international commercial contracts and the resolution of international commercial disputes **International Arbitration and the Rule of Law**, 2017-09-22 Volume 19 of the Congress Series contains the proceedings of ICCA's 2016 Mauritius Congress the first ICCA Congress held in Africa In this volume renowned practitioners scholars and jurists from the region and around the world explore the contribution of arbitration to the rule of law and economic development the conformity of arbitration with international standards of due process and the rule of law and the benefits and challenges of arbitration in Africa Topical issues of interest for practitioners academics and students of arbitration in the region and internationally include Due process issues in constituting the arbitral tribunal and challenging its members Interim measures issued by arbitral tribunals and domestic courts Burden standard and types of proof in the corruption defence What to do and what to avoid doing to prepare a persuasive case Do post award remedies ensure conformity of the arbitral process with the rule of law Do rules and guidelines properly regulate the conduct of arbitration The interface between domestic courts and arbitral tribunals What are appropriate remedies for findings of illegality in investment arbitration The effect of foreign national court judgments relating to the arbitral award What does the future hold for investment arbitration in Africa and beyond **The ICSID Convention, Regulations and Rules** Julien Fouret, Rémy Gerbay, Gloria M. Alvarez, 2019-12-27 This major new commentary on the ICSID Convention Regulations and Rules offers a new forward looking and highly practical interpretation of the convention and its associated documents It is the first commentary to provide systematic article by article coverage not only of the Convention itself but also of the institution rules the ICSID arbitration rules and the ICSID administrative and financial regulations Written by a team of leading experts from private practice government and academia this uniquely comprehensive work will be an essential resource for those in the investment arbitration community and a turn to reference work for international investment law and international arbitration scholars *Collection of ICC Arbitral Awards 2012 -*

2015 Jean-Jacques Arnaldez, Yves Derains, Dominique Hascher, 2018-12-21 The Collection of ICC Arbitral Awards 2012 2015 contains extracts of cases handled by the ICC Court of Arbitration one of the world's most respected arbitral institutions This most recent collection supplements six previous and successful volumes containing awards from the periods 1974 1985 1986 1990 1991 1995 1996 2000 2001 2007 and 2008 2011 This collection is a practical reference tool containing three types of useful indexes incorporating information from all three volumes a consolidated analytical table in both English and French contains extensive cross references based on the terminology used in awards and case notes a chronological index lists the awards a key word index also provided in both languages allows the reader to locate the material of interest quickly and easily In addition to providing a wealth of information in a highly accessible manner this book includes case notes and expert commentaries on the awards This publication is an indispensable reference work for anyone interested in international arbitration and in the reasoning of international arbitrators on the interpretation and application of contractual clauses international conventions and the law of international trade It is invaluable to both scholars and practitioners involved in the drafting and negotiation of international commercial contracts and the resolution of international commercial disputes

L'arbitrage institutionnel en France Bertrand Moreau, 2016-01-20 Le décret du 13 janvier 2011 modifiant le droit de l'arbitrage interne et international a conféré aux institutions d'arbitrage une priorité pour l'organisation de la procédure L'ouvrage rédigé par les institutions membres de la Fédération des Centres d'Arbitrage a pour objet de décrire les modalités de fonctionnement des 14 institutions qu'elle rassemble et dont le siège est en France la Cour Internationale d'Arbitrage de la CCI n'en fait pas partie Ces institutions ont promu et adopté une Charte éthique applicable tous les acteurs des arbitrages conduits sous leurs auspices et leurs règlements permettent aux parties d'éviter lescueils de l'arbitrage non institutionnel ad hoc Cet ouvrage est donc conçu pour familiariser les parties les chefs d'entreprise et leur service juridique les conseils les experts et les arbitres eux-mêmes avec le fonctionnement de ces institutions *Arbitrage international* Mauro Rubino-Sammartano, 2019-09-09 Cette édition française large révision et mise jour met l'accent minutieusement sur les aspects procéduraux qui ont créé un arbitrage international plutôt qu'une simple instance dans laquelle les parties sont de nationalités différentes ou qui concerne des rapports transnationaux L'ouvrage apporte de nouveaux concepts tels que la définition de l'arbitrage international fondée sur le droit procédural différent du droit transnational et une doctrine la doctrine du tronc commun pour identifier le droit matériel applicable aux litiges entre les parties appartenant à différents pays et qui suggère qu'un droit de l'arbitrage international s'est développé travers différentes conventions et lois Cette édition a été largement enrichie des arbitrages commerciaux internationaux des arbitrages relatifs aux traités d'investissement des arbitrages entre des organismes publics entre les États et les individus de la loi type de la CNUDCI et des procédures du Tribunal Iran USA ainsi que l'arbitrage relatif aux marchandises les procédures d'arbitrage online et d'arbitrage sportif En plus de traiter tous ces aspects de l'arbitrage par thème l'auteur présente une troisième génération d'arbitrage qui se fonde sur l'analyse préalable des

principaux obstacles au bon fonctionnement d'un arbitrage

L'arbitrage commercial international et l'ordre public
Jean-Baptiste Racine, 1999 Les Etats ont accordé à l'arbitrage international une large autonomie. Toutefois, cette autonomie n'est pas totale : elle trouve sa limite dans l'ordre public. L'évolution contemporaine aboutit à un recul de l'ordre public dans la convention d'arbitrage. La compétence de l'arbitre dans les domaines touchant l'ordre public est reconnue. La jurisprudence a non seulement autorisé les arbitres à appliquer des règles et des principes d'ordre public, mais elle leur a également confié le pouvoir de sanctionner la violation. La jurisprudence française a même adopté une règle matérielle de portée générale : l'ordre public joue un rôle particulier, il est devenu la seule cause de nullité de la convention d'arbitrage international. L'aptitude à compromettre de l'Etat et des personnes morales de droit public relève également de la méthode des règles matérielles de droit international privé. C'est aujourd'hui l'aptitude à compromettre qui, en vertu du principe de bonne foi, est considérée comme de l'ordre public international. L'ordre public s'est progressivement retiré du champ de la convention d'arbitrage. Comme par un effet de vases communicants, l'ordre public s'est déplacé de la convention d'arbitrage vers la sentence arbitrale. L'arbitre doit normalement respecter l'ordre public des Etats. Il doit, en premier lieu, respecter l'ordre public appartenant à la *lex causae*. En second lieu, au nom de l'efficacité de sa sentence et de la pérennité de l'arbitrage, l'arbitre doit respecter l'ordre public étranger à la *lex causae*. Outre l'ordre public étatique, l'arbitre assure le respect d'un ordre public transnational. La notion existe en dépit des critiques formulées son encontre. L'expansion de l'ordre public transnational est incontestable. Celui-ci est au cœur des évolutions contemporaines de la société internationale : c'est-à-dire la mondialisation de l'économie et l'uniformisation du droit. Enfin, un contrôle s'exerce sur une sentence lorsque celle-ci est présentée à l'exequatur ou lorsqu'elle fait l'objet d'un recours en annulation. A cette occasion, les juges d'un Etat vont vérifier la conformité de la décision arbitrale à l'ordre public. Si il est hors de question de remettre en cause l'autonomie de l'arbitrage en introduisant la révision au fond, il est nécessaire que le juge contrôle en droit et en fait la conformité de la sentence à l'ordre public international.

Aspects philosophiques du droit de l'arbitrage international Emmanuel Gaillard, 2008-08-31 Also available as an e-book Le droit de l'arbitrage plus encore que le droit international privé se prête à une réflexion de philosophie du droit. Les notions essentiellement philosophiques de volonté et de liberté sont au cœur de la matière. La liberté des parties de préférer aux juridictions étatiques une forme privée de règlement des différends de choisir leur juge, de forger la procédure qui leur paraît la plus appropriée, de déterminer les règles de droit applicables au différend, quitte ce qu'il s'agisse de normes autres que celles d'un système juridique, donne la liberté des arbitres de se prononcer sur leur propre compétence, de fixer le déroulement de la procédure et, dans le silence des parties, de choisir les normes applicables au fond du litige soulevé. autant de questions de légitimité. Le présent ouvrage s'attache à identifier les postulats philosophiques qui sous-tendent la matière, à montrer leur profonde cohérence et les conséquences pratiques qui en découlent dans la résolution des grands contentieux du commerce international.

Theory of International Law at the Threshold of the 21st Century Jerzy Makarczyk, 2023-09-14 Theory of International Law at the

Threshold of the 21st Century is a remarkable book and is destined to become a standard work without which no International Law library will be complete. The essays contained in this volume are written by the foremost experts and the topics have been chosen with the greatest care to reflect the most pressing current problems facing the world community. The research and writing made available in this collection will be of enduring worth and will be studied and quoted for decades to come. It follows in the finest traditions of the major collective works published by Martinus Nijhoff. Kluwer Law International. It is most appropriate that a remarkable book should be dedicated to a remarkable man and the editor of the volume Professor Jerzy Makarczyk has ensured that the choice of writers, the choice of topics and the quality of the material do indeed honour one of the leading international lawyers of his generation. Professor Krzysztof Skubiszewski *Revue de droit uniforme*, 2004

Tratado da Arbitragem António Menezes Cordeiro, 2023-07-10 A arbitragem incontornável. Mais de 80% dos contratos internacionais comportam convenções de arbitragem. Os litígios subsequentes ocupam por todo o mundo dezenas de milhares de juristas. No plano interno a arbitragem companheira potencial dos contratos mais significativos a celeridade, a economia, a confidencialidade e a adequação explicam-no cabalmente. Além disso, ela alargou-se às áreas administrativa e fiscal em termos que do nosso País fazem um pioneiro. Temos aqui trabalho digno e exigente para muitas centenas de juristas de todas as idades e formas. A arbitragem pioneira na globalização dos exigências da arbitragem internacional necessariamente niveladora soma-se um dado novo: a Lei Modelo da Uncitral de 1985 revista em 2006 e recebida em muitas dezenas de países com relevo para os que integram a União Europeia. A receção da Lei Modelo foi efetivada pela Lei nº 63/2011. Hoje vigoram entre nós textos muito semelhantes aos dos demais países com relevo para a Alemanha, a Espanha, a França e a Itália. Podemos recorrer às doutrinas e às jurisprudências desses países com cautelas, mas para proveito imediato. Eis a razão de ser do presente Tratado da arbitragem. As preocupações práticas que o norteiam explicam o sistema de exposição adotado e o de um comentário. Lei nº 63/2011 antecedida por uma introdução ao Direito da arbitragem **Les principes directeurs du procès dans la jurisprudence du Conseil constitutionnel** Eric Lestrade, 2015-05-01 Le Conseil constitutionnel en réalisant un travail d'actualisation partit de la Déclaration des Droits de l'Homme a permis l'émergence d'un droit constitutionnel processuel construit autour de principes directeurs de trois sortes selon que l'acteur du procès prioritairement concerné soit le juge ou les parties et une troisième celle des garanties procédurales permettant de favoriser les qualités essentielles du juge et de contrôler le respect des droits des parties Collected Courses of the Xiamen Academy of International Law, Volume 2 (2009) The Xiamen Academy of International Law, 2009-11-23 The Collected Courses of the Xiamen Academy of International Law contain the Summer Courses taught at the Xiamen Academy of International Law by highly qualified international legal professionals. The Second Volume of the Series contains the following articles: Aspects de la question des sources du droit international Yves Daudet The Paradigms of Universalism and Particularism in the Age of Globalisation Western Perspectives on the Premises and Finality of International Law Armin von Bogdandy and Sergio

Dellavalle Legal Aspects of Electronic Commerce Rules of Evidence Contract Formation and Online Performance Jose Angelo Estrella Faria The Elusive Pro Arbitration Priority in Contemporary Court Scrutiny of Arbitral Awards Tibor V rady The Xiamen Academy of International Law aims to promote academic exchanges among legal communities across the globe encourage examination of major international issues and by so doing seek ways to improve the possibilities for world peace and international cooperation It seeks to achieve this aim by providing the highest level of education to individuals particularly those from Asian countries interested in the development and use of international law persons such as young lecturers in international law diplomats practitioners of transnational law government officials in charge of foreign affairs and officials of international organizations Harmonization of business law in the caribbean, anglais René Kiminou, 2016

Le projet d harmonisation du droit des affaires dans la cara be est n de la d claration issue de la conf rence de Pointe Pitre Guadeloupe du 15 Mai 2007 et de l adoption d une liste de domaines juridiques prioritaires la deuxi me conf rence tenue Port au Prince Ha ti les 17 et 18 juin 2008 constatant que les tats de la cara be appartiennent diff rentes familles juridiques de Common law et romano germanique un des obstacles aux changes conomiques intra carib ens D o la n cessit d laborer des r gles juridiques uniformes dont la finalit est de favoriser des changes conomiques et d attirer des investissements dans la r gion carib enne S inspirant de l harmonisation du droit des affaires en Afrique l harmonisation carib enne se heurte des obstacles plus importants traditions juridiques et judiciaires diff rentes d faut de sources documentaires ignorance des diff rents syst mes juridiques Mais ces obstacles ne sont point insurmontables comme le montre la publication r cente de quelques projets de textes uniformes en droits de l arbitrage des contrats commerciaux des soci t s commerciaux internationaux des soci t s commerciales et en droit international priv

The International Effectiveness of the Annulment of an Arbitral Award Hamid Gharavi, Christoph Liebscher, 2002-03-14 In international arbitration as practiced today few issues are as controversial and hotly debated as the foreign enforcement of an arbitral award that has been annulled in its originating jurisdiction As more and more jurisdictions challenge such annulments the issue has inevitably attracted the intense scrutiny of practitioners and scholars Now in the first book written on the subject and a major work unlikely to be superseded for quite some time the international practitioner and scholar Dr Hamid G Gharavi provides a keen in depth analysis of the sources legal and practical grounds and possible solutions of the problem particularly as it affects international business transactions in the global economy Dr Gharavi analyzes the relevant provisions in all major international arbitration conventions as well as national laws on the annulment and enforcement of arbitral awards in force in more than fifty different countries Among the book s most notable features are the following invaluable information on and an in depth analysis of the travaux pr paratoires of the New York Convention pertaining to the articulation of annulment enforcement controls the effects of the cultural judicial and legal diversity of states and clear elucidation of the interests that often separate North from South in the practice of arbitration With detailed attention to theoretical and practical

perspectives especially as they reveal the dangers to which the enforcement of annulled awards can subject international business operators Dr Gharavi arrives after consideration of all interests at a global resolution aiming to establish an effective and harmonious international legal framework for the control of awards in accordance with the nature and mission of arbitration

Basic Texts / Textes de base (2005) International Tribunal for the Law of the Sea, 2005-11-01 This Edition is Out of Print please see the 3rd edition of 2015 9789004288676 <https://brill.com/view/title/27170> This volume contains the second edition of a selection of documents that are basic to the work of the Tribunal in parallel presentation in English and French It reproduces the following documents the Statute of the Tribunal the Rules of the Tribunal as amended the Resolution on the internal judicial practice the Guidelines concerning the preparation and presentation of cases the 1982 United Nations Convention on the Law of the Sea the Agreement relating to the Implementation of Part XI of the Convention on the Law of the Sea the Agreement on the Privileges and Immunities of the Tribunal In addition it also contains the 1995 Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks as well as an index to the documents published in English and French Ce volume contient la deuxième édition d'un ensemble de documents de base du Tribunal en langues anglaise et française présentés dans une édition bilingue Il s'agit des documents suivants le Statut du Tribunal le Règlement du Tribunal tel qu'amendé la Résolution sur la pratique en matière judiciaire les Lignes directrices concernant la préparation et la présentation des affaires la Convention des Nations Unies sur le droit de la mer de 1982 l'Accord relatif à la mise en œuvre de la Partie XI de la Convention sur le droit de la mer l'Accord sur les privilèges et immunités du Tribunal Le volume contient en outre le texte de l'Accord conclu en 1995 aux fins de l'application des dispositions de la Convention de Nations Unies sur le droit de la mer du 10 décembre 1982 relative à la conservation et la gestion des stocks de poissons dont les déplacements s'effectuent tant l'intérieur qu'au-delà des zones économiques exclusives stocks chevauchants et des stocks de poissons grands migrateurs ainsi qu'un index des documents reproduits en langues anglaise et française

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