

How Arbitration Made a Difference: Arbitrating for Peace

Edited by Ulf Franke, Annette Magnusson and Joel Dahlquist

By Edna Sussman

Upon the 100th anniversary of the Arbitration Institute of the Stockholm Chamber of Commerce (SCC), the SCC commemorated the occasion by celebrating the important role that arbitration has played for trade, economic development and peaceful resolution of disputes. Under the leadership of the SCC's Secretary-General Annette Magnusson, the SCC produced a book titled *How Arbitration Made a Difference: Arbitrating for Peace* and a movie titled *The Quiet Triumph—How Arbitration Changed the World*. Both are stirring and evocative works that readers should make every effort to enjoy. The movie is available at no cost on the SCC website. The book brings history to life with discussions by distinguished authors of the signal successes arbitration has achieved in resolving disputes that could have led to war.

The introduction to the book by Stephen Schwebel provides a succinct history of the development of arbitration involving states. Each of the 14 chapters that follow offers an analysis of a single dispute resolved by arbitration involving a state entity. Each chapter provides an introduction, describes the background of the conflict, the issues presented, the process followed, the resolution and, in many cases, the contribution made to the development of new norms and procedures for conflict resolution. To pique your interest we offer a preview of some of the conflicts discussed. Every student of arbitration would be well served to learn about these significant and intriguing historic conflicts and their resolution.

The book leads with a discussion by Jan Paulsson of the Alabama Claims Arbitration of 1872, which has been described by leading historians and commentators through the years as the greatest arbitration ever. The sums awarded were stupendous and the conflict presented a threat to world peace. The ship, the *CSS Alabama*, over the course of two years traveling the ocean, sank 64 U.S. vessels during the Civil War, and, along with 13 other similar vessels performing the same search and destroy of U.S. merchantmen and ships, virtually paralyzed carriage by sea to and from the northern states. The U.S. government blamed Britain for the commercial losses caused by these cruisers, which were built in England and manned by English sailors, and insisted that Britain had failed to respect neutrality. American leaders were clamoring for reparations that in today's dollars would be the equivalent of U.S. \$30 trillion, and would have bankrupted the British treasury. Britain acknowledged its legal duty to respect neutrality but denied any failure on its part to comply with the law. The ships were constructed in England, but were adapted for war outside of England leaving an open issue as to whether Britain had in fact violated its neutrality obligations. Feelings ran

high and war was a distinct possibility. Following extensive negotiations, the Washington Treaty of 1871 was successfully negotiated, pursuant to which Britain expressed regret for the *CSS Alabama* and other vessels that left from British ports and the two states agreed to a tribunal of five arbitrators. The chapter provides a fascinating description of those party-appointed arbitrators and their role, the conduct of that arbitration, the development of the importance of the principle of competence-competence, and the role of diplomacy in arriving at the ultimate resolution.

As an example of a territorial dispute resolved in arbitration, David Rivkin addresses the *Egypt v. Israel* (Taba) Award issued on September 29, 1988. Taba is a 250-acre triangular territory located about a dozen miles south of Eilat on the shores of the Gulf of Aqaba. It is a picturesque location and the home of a five-star beachfront hotel which had become important to Israel's tourism industry. It had no significant strategic or political importance in and of itself, but it took on considerable political significance following the peace treaty entered into between Egypt and Israel in 1979. The dispute presented a real risk of abandonment of that treaty, which called for Israel to withdraw from the Sinai. Tensions over this border dispute and other issues that arose following the peace treaty threatened the breakdown of that hard-won treaty. The situation was rescued by the arbitration, which marked the first time a dispute between an Arab state and Israel was settled by arbitration. In the award, the tribunal complimented the parties for the "spirit of cooperation and courtesy which permeated the proceeding in general and which thereby rendered the hearing a constructive experience."

And, of course, the book includes a review by Karl-Heinz Bockstiegel of the well-known Iran-U.S. Claims Tribunal which was created in 1981 as one of the measures taken to resolve the crisis in relations between the Islamic Republic of Iran and the United States arising out of the November 1979 hostage crisis at the U. S. Embassy in Tehran and the subsequent freezing of Iranian assets by the United States. While the tribunal held its first meeting in the Peace Palace in The Hague in July 1981, at the time of this writing there are still a few cases remaining between states pending for decision. But over 3,700 claims lodged by nationals have been adjudicated. The Iran-U.S. Claim Tribunal's work has had an immense impact on the development of arbitration and served as the schooling ground for a host of the generation's arbitration practitioners, both arbitrators and counsel. The chapter highlights some of the issues that were reviewed and addressed by the Tribunal, including what would be acceptable in the

taking of evidence, the scope of applicable substantive law, the interpretation of treaties and *force majeure*.

Additional chapters include discussions of the dispute that arose out of the French sinking of the *Rainbow Warrior* Greenpeace flagship vessel for its campaign against French nuclear tests carried out in the Pacific; the conflict over Brcko which was uniquely positioned along the Croatian border providing the Bosnia-Herzegovina Federation with one of its only points of access to the rest of Europe; the dispute in Sri Lanka involving issues concerning whether property destruction was caused by the government forces or by the Tamil Tigers; the dispute concerning the construction and location of the U.S. Embassy in Moscow; the border dispute between Pakistan and India in the Rann of Kutch; the dispute concerning cross-border pollution from Canadian smelters into the United States. To learn more about these and other fine examples of resolution through arbitration, read the book.

Conclusion

The book should be of interest not only to those fascinated by historical events, but also those interested in arbitration and the important role it has played over the

decades in promoting peace. As former United Nations Secretary General Kofi A. Annan states in his foreword: “[p]eaceful resolution of disputes rarely makes the headlines. The use of the rule of law and pursuit of peace often takes place quietly, far away from the limelight.” This book serves the important purpose of bringing arbitration forward into the limelight as a significant contributor to world peace. It can only be hoped that world leaders will seize upon opportunities to engage in arbitration and other amicable dispute resolution processes, as have those in the conflicts featured in the book, to resolve even seemingly intractable conflicts.

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