

Definition of an “Arbitral Award” in the New York Convention

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Abstract: The paper addresses a significant gap in the New York Convention, focusing on the lack of a clear definition for "arbitral award." This omission presents considerable challenges in the realm of international arbitration, particularly affecting the recognition and enforcement of arbitration decisions across different jurisdictions. The lack of a specific definition leads to legal ambiguities and practical difficulties in international dispute resolution, impacting the efficiency of global commercial and trade arbitration processes. The paper strongly argues for the inclusion of a comprehensive definition within the Convention, highlighting how this would provide much-needed clarity and consistency. It suggests that a well-defined term would streamline the arbitration process, aiding legal practitioners, arbitrators, and the parties involved in disputes. Ultimately, the paper concludes that the introduction of a specific definition for "arbitral award" in the New York Convention is not only necessary for legal precision but also for enhancing the effectiveness and reliability of international arbitration as a tool for resolving commercial disputes.

1. Introduction

With the development of global international trade and economic cooperation, international commercial disputes increase. Countries in the world generally regards arbitration as an effective means to resolve international commercial disputes. They enact and modify arbitration laws. The New York convention is the most important international legal instrument for commercial arbitration in the world.[1] It is regarded as the most successful international convention in the field of private international law. An arbitration award is an award made by the arbitrator. The award could be that one party must pay money to the other. However, The New York Convention does not contain a definition of an “arbitral award”. In my opinion, there is a need to provide such a definition under the New York Convention. This essay will focus on the definition of the need for “arbitral award” in the New York Convention, by considering nomenclature, the content of arbitration decisions, and their permanent or temporary nature to illustrate the definition and reason for the need.

2. The definition of “arbitral award”

The New York Convention does not include a definition of "arbitral award". Even though it provides for recognition and enforcement of arbitral awards. In addition, the New York Convention's closest definition of "arbitration award" is that the term "arbitration award" includes not only the award rendered by the arbitrator in each case, but also the award submitted by the parties to a permanent arbitration body.[2] Generally speaking, the decision of arbitrators in the arbitration tribunal is called "award". As far as I'm concerned, the New York convention had better follow this concept. It is as binding and final as the effective judgment of the court, even if the plaintiff's claim has failed and no damages have been paid.[3] Although final decisions can be challenged in limited circumstances, such as prejudice. There is usually no appeal. Courts maintain the jurisdiction of arbitrators, so challenges based on this have rarely been successful. However, any remedy given to the parties must be certain and enforceable. The parties may freely reach an agreement on the amount of the arbitration fee. If no agreement is reached, the tribunal will award the costs of arbitration on such basis as it deems appropriate. At the same time, arbitration award compensation is not only to compensate for the loss. For example, a party may obtain an order to perform a contract or prohibit an act.[3] The New York convention is an effective mechanism to resolve international commercial and trade disputes. Therefore, it needs to provide a definition of "arbitral award" to make the award more specific. Furthermore, it makes the parties applying the New York convention predictable in their decisions. Therefore, the definition of the “arbitral award” need to be provided under the New York Convention.

3. The content of decisions rendered in arbitration

The following essay will focus on the content of the arbitration decision from the procedure, the ascertainment of facts, the application of law, the disputes between the parties, the measures to seek relief and the analysis of the arbitration tribunal. It is important to decide what an arbitration award must contain in accordance with the New York convention and the agreement of the parties. Furthermore, if the New York Convention contains the content of an "arbitral award", then the content will be as follows:

A) Mandatory requirement

For mandatory requirements, most arbitration laws have a minimum mandatory requirement on the content of the award.[3] This is usually the basis on which an arbitration award should be stated. At the same time, the date of award and the place of arbitration must be indicated on the award. However, failure to comply with the mandatory requirements may result in the withdrawal or cancellation of the award.

B) Content of the procedure

The award should contain basic information about the arbitration, such as:

- the names and addresses of the parties to the arbitration;[3]
- the applicable law;
- the rules of procedure for arbitration;
- the language of arbitration;
- the name, nationality and contact information of the arbitrator;
- the composition of the arbitration tribunal;
- the methods and procedures adopted by the arbitration tribunal to determine the facts of the case;
- the date of hearing;
- the date of conclusion of arbitration;
- the duration and extension of the ruling;

- the type of arbitration award.

C) types of arbitration award

The type of award shall be indicated on the cover of the arbitration award.[4] The awards are generally divided into the following categories:

- Partial award - The parties to the arbitration have determined part of the claims. However, there are other factors that need to be addressed. The parties may then continue to arbitrate the remaining outstanding issues.[3] For example, if the arbitral tribunal does not award on the part of the case that is clear, the subject matter involved may be damaged or lost. However, the facts of other parts of the case have not been investigated. In this special case, the arbitral tribunal may make a partial award on the facts concerning the subject matter that is about to be damaged or lost. From this perspective, partial award has the temporary nature. On the other hand, partial award is the final decision of the arbitral tribunal on some issues.[5] Since this part of the problem can be separated from other unresolved issues. And it is independent of other matters. Therefore, partial award is permanent. Overall, it has the characteristics of both temporary and permanent.

- Interim/preliminary award - An interim/preliminary award refers to a temporary arbitration decision made by the Arbitration Commission when the parties disagree with the validity of the arbitration agreement and file a jurisdictional defense against the Arbitration Commission. The objection to the arbitration agreement shall be filed by the parties before the first hearing of the arbitral tribunal. After the arbitral tribunal makes an interim award, the arbitral tribunal may continue to decide on the disputes of the parties or terminate the trial of the case in accordance with the arbitral procedure. Moreover, the award is provisional or preliminary. Its purpose is to confine disputes within a certain scope. In addition, the final decision shall not be inconsistent with the interim decision. Therefore, it is binding on the final award.[5] And obviously, interim/preliminary award has the character of temporary.

- Final award - It is generally written and signed by all arbitrators. Moreover, the final award must state the reasons for the award and indicate the time and place of the arbitration. Once the final award is given, the arbitration procedure is terminated.[3] Therefore, as with the judgment of the court, once effective, the parties must execute unconditionally and no further appeal can be filed. Definitely, final award has the permanent feature.

- Additional award - The parties to the arbitration may request an additional award within a limited time when the award rendered by the arbitration tribunal has not resolved all the claims of the parties.[2] It has the character of temporary or permanent.

- Default award - An award made by a party without participation in the proceedings is an default award.[5] In addition, default award can be temporary or permanent.

- Consent Award - The parties to the arbitration may reach consent at any stage of the arbitration proceedings. Furthermore, a consent award can be enforced if a party does not comply with the consent clause.[3] For example, it is enforced under the New York convention in non-family cases.[5] Therefore, it has the advantage of saving time for arbitration and has the nature of permanent.

D) Jurisdiction

The contents of the arbitration award shall include the basis of the jurisdiction of the arbitral tribunal. Generally speaking, the agreement between the two parties is cited as the basis. If a party does not participate in the arbitration proceedings, or if a challenge to jurisdiction is raised and resolved, this shall be stated in the arbitration award.[5]

E) A request for relief by the contracting party

The award shall refer to the claims for relief made by the parties to the arbitration at the end of the proceedings. Sometimes it is determined by the arbitration tribunal in the light of the written opinions of the parties. Moreover, both parties' claims for relief and the matters to be decided by the

tribunal's authority can be used as a checklist to ensure that the tribunal does not exceed its authorized scope. Furthermore, in some cases, the question to be determined by an arbitration award is decided on the basis of other questions. This only depends on the outcome of the main problem. For example, a decision on damages depends on previous liability determination.[5]

F) The reasons of the arbitration tribunal

The reasoning of the arbitration tribunal is the most important part of the arbitration award. Moreover, it is clearly stipulated in many national arbitration laws and most arbitration rules. This would limit the rights of arbitrators and force them to make decisions based on law and fact. Furthermore, it reduces the risk of deviations in the arbitral award and increases the trust of the parties in adjudicating the arbitral tribunal. In addition, it is helpful for the court to understand the decision of the arbitral tribunal when executing the procedure. For the reasons section of the award, one way to ensure adequate reasoning is to refer closely to the list of contentious issues agreed to by the parties or determined by the tribunal. Then address the main arguments of the parties on each issue. With regard to the interpretation of certainty, the arbitration tribunal shall apply the relevant law according to the facts of the case. Under special circumstances, the parties may jointly request the arbitral tribunal to make an order without reason due to time constraints. In the event of such a situation, the arbitration tribunal shall verify and record, in accordance with the arbitration law and the arbitration procedure, whether this operation is allowed. Moreover, the arbitral tribunal needs to be vigilant that there is no reason to change its original award in the process of drafting the award.[5]

G) The operative part of the arbitration award

The arbitration award must include the final decision of the arbitration tribunal. This is usually listed separately at the end of the arbitration award. It is called the operative part of the award. Moreover, this part briefly lists the arbitration tribunal's decision on the request and relief of the parties point by point. Importantly, it helps readers quickly understand the decision of the arbitral tribunal.

This part is usually preamble to an introductory statement, such as: "for the above reasons, the arbitral tribunal has made the following decision." If the award is not final, it may include a ruling that adjourned certain pending matters to a later stage in the proceedings. For example, it might say: "all other objections to jurisdiction should be determined at the next stage of these proceedings." After the parties' claims or remedies have been resolved, the final award shall also state that "all other claims have been rejected."

Within the scope of the claims made by the parties to the arbitration, the arbitration tribunal may grant the following types of relief:

- Instructing payment. It specifies the amount, the type of currency, and the specific payer and receiver. Payment terms are also included in some cases.
- Giving an injunction. It means that the tribunal orders the parties to do something or not to do something.
- Ordering special performance of contract. The tribunal ordered the performance of the contract.
- Rewarding interest.[5]

H) Other content of award[5]

- Summary of fact and claim.
- Arbitrators disagree on the arbitral award.
- Reservation of problem. If the award is not final, the arbitral tribunal may retain the issue for later decision.
- The issue of interest and tax.
- Costs.

4. Conclusion

The arbitral award is a written decision made by the arbitral tribunal on the disputes of the arbitration submitted by the parties and binding on the parties at the end of the trial. Making an award is the final procedure of the arbitration hearing. It physically decides on the rights and obligations of both parties and procedurally marks the end of the case. Arbitration implements a system of “one final decision”, and the ruling takes effect as soon as it is made. Therefore, making an award is a crucial procedure in the arbitral proceedings. However, the New York Convention does not contain the definition of “arbitral award”. It is unreasonable. As a convention for the recognition and enforcement of international arbitration, the New York Convention plays an extremely important role in the resolution of disputes in arbitration. In addition, it is a milestone for international arbitration. According to my research, because the New York Convention is a convention for the recognition and enforcement of foreign arbitral awards, the definition of an arbitral award is the basis for its recognition and enforcement. If the content of the New York Convention does not contain the definition and relevant content of the “arbitral award”, this would make the lack of grounds and foundations for the recognition and enforcement of foreign arbitral awards. Moreover, the parties who are not conducive to arbitration are predictive of the case. On the contrary, only the definition and content of the arbitral award are expressly stated, the award can be clear when it is recognized and enforced. This essay focuses on the definition and content of arbitral awards under the New York Convention. In the content section of the arbitral award, the classification of the awards and their temporary or permanent nature are discussed. Furthermore, according to my understanding, the interim/preliminary award has a temporary character; the final and consent award are permanent; the partial award has the nature of both temporary and permanent; the additional and default award can be temporary or permanent. At the same time, this essay lists other elements that should be included in the arbitral award under the New York Convention, such as the mandatory requirement, the content of the procedure, the jurisdiction, the request for relief, the reasons of the arbitration tribunal, the operative part of the arbitration award, reservation of problem and costs. If the New York Convention can add the general definition and related content of the “arbitral award”, it will make it more complete and clear. Moreover, I believe that the New York Convention will do so in the near future. In conclusion, my point is that the definition and content of the “arbitral award” need to be provided under the New York Convention.

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