

TWELFTH COMMISSION
Arbitral settlement of international disputes other than between States
involving more than two parties

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DECLARATION

The Institut de droit international approves the Report of the 12th Commission.

The Commission has studied problems arising in private law arbitrations of an international character between more than two parties (multiparty arbitration). The problems arise, in particular, in connection with the appointment of arbitrators, and out of requests to consolidate several independent arbitrations or to join parties in the arbitration proceedings who are not parties to the arbitration agreement. Multiparty arbitrations are not infrequent.

The Commission's studies have confirmed the general principle underlying earlier resolutions of the Institut de droit international, that the consent of the parties to an international arbitration agreement must be required in all circumstances.

Issues of an international character such as appointment of arbitrators in multiparty arbitration, consolidation of arbitration proceedings and related issues should be regulated either by the parties' agreement or by the arbitration rules of arbitration institutions and not by national legislation.

In the interests of economy and efficiency, national courts may consolidate judicial proceedings and permit the participation therein of third parties regardless of the parties' wishes. Attempts to transfer these practices to international arbitration run the risk of compromising both the integrity of arbitration as a dispute resolution method and the principle that arbitration rests on the consent of the parties. Parties should retain the right to choose those with whom they wish to go to arbitration, the rules to which they wish to subject themselves, and the arbitrators to whom they are willing to entrust their case. Arbitrators are appointed for a variety of reasons, including their expertise and experience in the type of controversy that the arbitration involves. That is particularly so in international arbitration where knowledge of, and experience in, international trade and relations often are of great importance. There is no assurance that in consolidated arbitrations, where only some, if any, of the original arbitrators will take part, a party will consider that its chosen arbitrator has been replaced by an equally appropriate substitute. Similarly, other basic rights, such as to choose the party with whom one wishes to arbitrate and the applicable arbitration rules, may be set aside where consolidation or third party intervention are imposed.

Where consolidation or other similar measures have been imposed upon the parties without their agreement, the question will inevitably arise whether the resulting award will be enforceable in other countries.
