Contents

Forewo	rd	V
Preface	and Acknowledgements	VII
List of	Abbreviations	XV
Chapter	·I	
Notion	IS AND CONCEPTS	1
A.	Introduction	1
A.1.	Prologue – A case which stumbled for reasons of language	1
A.2.	Does globalization extend to language?	4
A.3.	Language and the market value of arbitral institutions	7
B.	What Does the Language of Arbitration Encompass?	9
C.	Determination of the Language of Arbitration – The Standard	
	Answer and a Number of Questions and Distinctions	13
C.1.	(Lack of) influence of courts and of municipal law on the	
	language of arbitral proceedings	13
C.2.	The standard answer	16
C.3.	The issue of the 'initial language'	17
C.3.1.	Setting an initial language	18
C.3.2.	Working out a solution without an identified initial language	20
C.4.	Default language, or 'official language' of the arbitral	
	institution	21
C.5.	Language or languages?	24
C.6.	Any language?	28
D.	Questions Relating to the Language of Communication with	
	the Arbitral Institution	31
D.1.	The language of communication with the arbitral institution as	
	a distinct category	31
D.2.	Is separate regulation consistent with rules and principles	
	pertaining to the language of arbitral proceedings?	33

X CONTENTS

D.3. D.4.	Possible advantages and disadvantages of separation What does the language of correspondence with the institution	35
D. 1.	encompass?	36
D.5.	One or more languages of correspondence with the institution in the same case?	39
E.	Concluding Remarks	40
Chapter	II	
•	GE ISSUES AND LANGUAGE-RELATED STRATEGIES PRIOR TO THE	
	TUTION OF THE ARBITRAL TRIBUNAL	43
A.	Choice of Language by the Parties – and the Consequences of	
	Such a Choice	43
A.1.	Options and considerations in making the choice	43
A.2.	Choice of law and choice of language	45
A.3.	Consequences of a choice made by the parties	48
A.3.1.	Consequences for the arbitrators (adaptation of the arbitrators to a given choice)	48
A.3.2.	Consequences for the parties (adaptation of the parties to a given choice)	52
B.	Absence of Choice Made by the Parties – and the	
	Consequences of the Absence of Choice	54
B.1.	Consequences for the arbitrators (adaptation of the arbitrators to an absence of choice)	55
B.2.	Consequences for the parties (adaptation of the parties to an	
	absence of choice)	56
C.	Language Issues in Court Proceedings in Assistance of Starting Arbitration	57
Chapter	III	
DETERM	INING THE LANGUAGE OF ARBITRATION AND ORDERING	
	ATION BY THE ARBITRATORS AFTER THE CONSTITUTION OF THE	61
A.	Determination of the Language of Arbitration by the	
*	Arbitrators	61
A.1.	When are the arbitrators entitled to determine the language of arbitration?	61

CONTENTS	XI
CONTENTS	X

A.2.	Considerations in choosing the language of arbitration	63
B. B.1.	Ordering Translation The scope of the term 'translation'	66 66
B.2.	The standard set by UNCITRAL enactments regarding the	
B.3.	notion and scope of translation The authority (and the limits of the authority) of the arbitrators	67
D.3.	in ordering translation of documentary evidence	71
B.3.1.	Are the arbitrators free in opting for a language while ordering translation of documentary evidence?	71
B.3.2.	Translation into only one of the several designated languages	75
B.3.3.	Ordering translation of some of the documents only	77
D.J.J.	Ordering translation of some of the documents only	/ /
Chapter	IV	
Transla	ATION IN INTERNATIONAL ARBITRATION PROCEEDINGS	81
A.	Introduction	81
B.	The Function of Translation in International Arbitration	
	Proceedings	82
B.1.	What purpose does translation serve?	82
B.2.	The limitations of translation	85
C.	How is Translation Organized and Effected?	90
C.1.	Who are the translators?	90
C.2.	Who hires the translator?	94
C.3.	Who pays for the translation?	98
C.3.1.	Advancing the costs	99
C.3.2.	Final allocation of costs	103
C.4.	Methods of translation	107
C.4.1.	Simultaneous and consecutive translation	107
C.4.2.	Translation by the arbitrators themselves	108
D.	Deficiencies Pertaining to Translation and Their Consequences	111
D.1.	The problem	111
D.2.	Lack of translation	111
D.2.1.	Variants of lack of translation	112
D.2.2.	Consequences of lack of translation	114
D.2.3.	Waiver	120
D.3.	Mistranslation	121
D.3.1.	Variants of mistranslation	121

XII CONTENTS

D.3.2. D.4. D.5.	Consequences of mistranslation Translation uncalled for Consequences regarding the arbitrators and the arbitral	122 125
D.3.	institution	128
E.	The Issue of the Hidden Anchor Language (When the Original Is Actually a Translation)	133
F.	The Issue of Closely Related Languages – Reflections on a Bulgarian Case	140
F.1.	An introductory observation	140
F.2.	The facts of the Bulgarian case	141
F.3.	The perception which emerged in enforcement proceedings	143
F.4.	The perception which emerged in setting aside proceedings	148
F.5.	General guidance from the Bulgarian case?	152
F.6.	The advantages and the predicament of closely-related	
	languages	153
Chapter V		
Languad	GE AND TRANSLATION IN POST-AWARD COURT PROCEEDINGS	157
A.	Introduction	157
A.1.	The standard of an understandable award fit to be considered in court proceedings	158
A.2.	Two settings in which language and translation emerge as an	
	issue in post-award court proceedings	160
B.	Translation and Certification of the Documents of the	
	Arbitration Proceedings	162
B.1.	The standard set in Article IV of the New York Convention, and some questions	162
B.2.	The scope of the standard set for translation of documents	164
B.3.	Can a foreign-language award (or arbitration agreement) be	
	considered in post-award proceedings without translation?	168
B.3.1.	Extension of the range of languages from which no translation	1.60
D 2 2	is needed	169
B.3.2.	Can the court waive the duty to produce translation?	170
B.3.3.	The impact of the more-favorable-right provision	172
B.4.	The issue of certification	175
B.4.1.	Persons qualified to issue certification, and the purpose of certification	176

CONTENTS XIII

B.4.2.	What type of documents and what parts of the document need to be certified?	179
B.4.3.	Is it relevant whether the content of the award (or the accuracy of the translation) is disputed?	180
B.5.	Mistranslation in the text of the award	183
B.6.	On the consequences of a failure to submit fitting documents	105
D. 0.	at the time of the application	188
C.	Language and Translation in the Context of Control of Procedural Irregularities in Post-Award Proceedings	190
C.1.	The issue of language in the context of control of procedural	170
C.1.	irregularities in post-award proceedings – general remarks	190
C.2.	Use of wrong language (lack of translation)	190
C.2.1.	Due process ('The party against who the award is invoked was	174
C.2.1.	not given proper notice [] or was otherwise unable to present	
	his case')	192
C.2.2.	,	192
C.2.2.	'Arbitral procedure not in accordance with the agreement of	
	the parties, or [] not in accordance with the law of the	198
022	country where the arbitration took place'	
C.2.3.	Misconduct of the arbitrator	202
C.2.4.	Relevance of lack of translation (relevance of the document or	205
0.2.5	of the presentation which was not properly translated)	205
C.2.5.	The issue of waiver	207
C.3.	Mistranslation	210
C.3.1.	Mistranslation which remains unnoticed during the arbitral	
	proceedings	210
C.3.2.	Translation contested during the arbitral proceedings	215
C.3.3.	Relevance and waiver	219
Annex I	International Conventions and UNCITRAL Enactments –	
	Provisions Pertaining to Language and Translation	223
Annex II	National Legislation – Provisions Pertaining to Language	
	and Translation	229
Annex III	Institutional Rules – Provisions Pertaining to Language and	
	Translation	253
Table of C	Cases	293
Bibliography		299
Index		301