

# Kluwer Arbitration Blog

## The Contents of the ICCA Awards Series, Volume I (2023), Upload 2

Stephan Schill (General Editor, ICCA Publications; Amsterdam Center for International Law, University of Amsterdam) · Saturday, March 2nd, 2024

Six unpublished awards rendered under the auspices of the International Chamber of Commerce are now available on the [KluwerArbitration](#) database, as part of the 2023 volume of the [ICCA Awards Series](#).

The arbitrators dealt with a broad range of issues, including the application of the CISG and of the UNIDROIT Principles, principles of contractual interpretation, the extension of arbitration clauses to nonsignatories and the determination of interest. Three awards are of particular interest.

In [one case](#), the sole arbitrator ruled that, under the CISG and the UNIDROIT Principles, a buyer could not offset damages for late delivery against the purchase price. The CISG did not include setoff among the buyer's rights in case of late delivery, and the UNIDROIT Principles provided that setoff could be exercised subject to notice requirements that the buyer had not fulfilled. The arbitrator thus concluded that the buyer's partial non-payment constituted a breach of contract, and ordered the buyer to pay the outstanding amount, damages, and interest.

In [a dispute between a Turkish claimant and a Brazilian respondent](#) over a contract governing the payment of sums awarded in a previous arbitration between them, the sole arbitrator, applying Brazilian law, held that a party's unilateral expectation needs to be explicitly stated in a contract to be binding on the other party. In this case, while the claimant's expectation that the Brazilian respondent would make the agreed payments from Brazil – enabling tax credit offsets against Turkish taxes – was legitimate in view of some factual elements and some precontractual discussions, it was not recorded in the contract between the parties. The arbitrator thus rejected the claimant's claim for damages resulting from it being unable to offset tax credits against Turkish taxes.

In [an arbitration seated in Switzerland](#), the sole arbitrator declined jurisdiction over a nonsignatory claimant. The arbitrator based his finding on the jurisprudence of the Swiss Supreme Court, which allows extension of arbitration clauses to nonsignatories only when the party seeking an extension is entitled in good faith to interpret the third party's behavior as a statement of intent to be bound by the main contract and the arbitration clause therein – a requirement which was not met in the present case.


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