The ILA's Recommendations therefore provide a useful basis for the solution of the problems that may arise in arbitrations. They are an excellent starting point for any analysis of the res judicata effects of awards and should be referred to by arbitrators (and perhaps to some extent even judges) as a weighty source of guidance. It is particularly important that they can be a source of reassurance to arbitrators as to the feasibility - and actually the advisability - of adopting an approach that is arbitration specific and detached from the peculiarities of domestic law. At the same time, they can serve to prevent each arbitral tribunal from making the rules as it goes along and thus perpetuating uncertainty and haphazard solutions. Accordingly, the Recommendations seem to deserve more attention than the relatively off-hand treatment accorded to them by some of the awards discussed above. In spite of their being labeled as recommendations, the principles enunciated in the ILA's instrument lend themselves to be applied almost as a set of rules, or of guidelines, that, if utilized consistently in arbitral practice, could bring about a good measure of uniformity and predictability in this area. They can be the kernel of what, over time and with appropriate adaptions and complements to take into account developments in the practice and in the thinking about policy implications, could evolve into a set of more consolidated arbitration-specific uniform rules on res judicata, such as the IBA's rules on evidence and on arbitrator conflicts of interest.

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60 See the awards discussed in Section 5.2 (i) and (ii) above.

61 As is well known, initially such rules appeared to many as artificial or too slanted in the direction of common law approaches, but they are now generally recognized as the standard for international arbitrations.

Referring Principles:

XIII.4.5 - Conclusive and preclusive effects of awards; res judicata