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FOR COMMERCIAL ARBITRATION

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GENERAL EDITOR  
ALBERT JAN VAN DEN BERG

with the assistance of  
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# INTRODUCTION

This twenty-fifth volume of the Yearbook marks a quarter-century of ICCA publications in the field of international commercial arbitration. Volume I of the Yearbook appeared in 1976, under the General Editorship and guiding hand of Prof. Pieter Sanders. Since then, the Yearbook has grown and evolved, and developed companion publications such as the *International Handbook on Commercial Arbitration* and the *ICCA Congress Series*.

As Pieter Sanders wrote in the Introduction to Volume I: “It is the purpose of the Yearbook to give the necessary information which practitioners of international commercial arbitration are looking for.” Twenty-five years later, the Yearbook still seeks to provide the arbitration community, a community which has grown in numbers and expanded geographically, with relevant and up-to-date information, compiled and edited to be easily accessible.

Part I of the Yearbook reflects the history of the Yearbook, as it is the Part in which National Reports were originally published. These Reports, along with English language versions of arbitration legislation and other relevant texts, are now published in ICCA’s *International Handbook on Commercial Arbitration*. Part I of the Yearbook reproduces the Table of Contents of the Handbook, thus informing the reader of its contents and the most recent additions. Brief summaries of the key features of new arbitration legislation are provided in Part IV on Recent Developments in Arbitration Law and Practice. New legislation from Greece, Indonesia, Korea and Nepal is described in this year’s reporting. Reference is made to the Handbook where new National Reports on these countries, written by local experts, will soon appear.

Three new sets of Rules regulating mediation or arbitration are included in Part III – A, each accompanied by a brief Introduction highlighting their new and innovative features. They are the new Arbitration Rules of the Chartered Institute of Arbitrators, including the Cost Controlled Arbitration Rules with an Introduction by Nael Bunni; Rules of Proceedings of the Court of Arbitration of the Hungarian Chamber of Commerce and Industry with an Introduction by Éva Horváth; and the London Court of International Arbitration (LCIA) Mediation Procedure, with an Introduction by Yves Fortier.

The selection of arbitral awards in this volume begins with three ad hoc awards made under the UNCITRAL Rules. These awards deal with substantive issues such as force majeure, fundamental breach of contract, lost profits and calculation of damages, and procedural issues such as the effect of an injunction restraining arbitration, the place of evidentiary hearings, and the effects of a

## INTRODUCTION

truncated tribunal. Part II – B contains a related court decision by the President of the District Court of The Hague where a party unsuccessfully sought to enjoin a hearing of the arbitral tribunal which made the latter two of the ad hoc awards. The selection of awards continues with awards made under the auspices of two German trade organizations, the German Coffee Association and the German Maritime Arbitration Association and the two major Italian arbitral institutions, the Italian Arbitration Association (AIA) and the Chamber of National and International Arbitration of Milan. For the first time, the Yearbook reproduces awards made by the Court for Arbitration for Sport (CAS). Awards made under the auspices of ICSID and ICSID's Additional Facility are also included, as is a broad selection of ICC awards. The topics dealt with in the awards cover a wide range of procedural and substantive issues, which are indexed in the Index of Arbitral Awards for this volume, included at the end of Part II – A.

This year, reporting on the Iran-US Claims Tribunal is limited to a statistical Introduction. It is anticipated that in the coming volume, the orders, decisions and awards of the Tribunal made in the two-year reporting period will be included, along with the usual Introduction and Survey, the latter providing a comparative overview of the issues dealt with by the Tribunal.

Part II – B reports leading court decisions of general interest; court decisions applying arbitration conventions – this year the 1958 New York Convention and the 1975 Panama Convention – are reported in Part V – A and Part V – D, respectively. Moreover, the Yearbook reproduces the excerpts of court decisions applying the UNCITRAL Model Law as published by UNCITRAL in CLOUT, supplemented with an Index of Articles of the Model Law.

The reporting on the New York Convention in this volume comprises 67 decisions from eight countries, the greatest number, 51 decisions, coming from the United States district courts, courts of appeals and the Supreme Court.

The Consolidated Commentary on the New York Convention court decisions reported since the publication of Volume XXI (1996) will follow shortly after the publication of this volume of the Yearbook.

The great number of court decisions on the 1958 New York Convention also reflects the multiplicity of issues dealt with by the courts in applying and interpreting the Convention. As noted in my Introduction to Volume XXIV (1999), the issue of the enforcement abroad of awards set aside in the country of origin still arises under the Convention. In two decisions reported this year, Germany no. 51 (Oberlandesgericht Rostock, 28 October 1999) and US no. 325 (United States District Court, Southern District of New York, 22 October and 29 November 1999) the courts held that the award, set aside in the country of origin, could not be enforced under the New York Convention. The moment when an award became final was at issue in US no. 327 (United

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States Court of Appeals, Fifth Circuit, 5 November 1999) where the court had to determine in which year the proceeds of an award – in this case the 1994 ICC award made between Sedco and Sonatrach – should be subject to US federal income tax. A related question regarding US federal income tax arose in US no. 298 (United States Tax Court, 8 July 1998) where the tax court was called upon to decide whether a portion of the arbitral award of 24 March 1982 between Kuwait and Aminoil should be taxed as a payment in the nature of interest or as long-term capital gain.

Part V – D contains three US decisions applying the 1975 Panama Convention, all three of which underline the close relationship of this Convention to the 1958 New York Convention, in the text and interpretation.

Part VI contains a “Directory of Arbitration Websites and Information on Arbitration Available Online” by Rosabel E. Goodman-Everard. Significantly, ICCA initiated its own website this year at: <http://www.arbitration-icca.org>. On online version of the Directory, with links to the sites listed will be posted on ICCA’s website.

None of the above material could have been collected, compiled, edited, and made ready for printing without the cooperation of the numerous correspondents throughout the world, as well as the efforts of the dedicated staff of the ICCA publications. Each of these staff members deserves individual mention and thanks:

- Ms. Ellen Meijkamp, my secretary for the last twenty years, who among her many responsibilities provided a vital link between my practice in Amsterdam and the editorial staff of the Yearbook. Concurrent with the completion of this Yearbook, she has begun her well-deserved retirement.
- Ms. Alice Siegel who has provided assistance in the hectic final stages of the preparation of the Yearbook in preparing texts and CRCs;
- Ms. Hilmara Requena, who leaves the ICCA staff this year, and who for this volume of the Yearbook and for many previous volumes, has ensured that the Yearbook is consistent and accurate in form and content.
- D.ssa Silvia Borelli, former researcher at the Sanders Institute at the Erasmus University, Rotterdam, and presently employed by the International Bureau of the Permanent Court of Arbitration as a member of the editorial staff, not only for her excellent editorial and translation work, but also for compiling the Index of Arbitral Awards
- Ms. Heather Kurzbauer, who this year has joined the ICCA editorial staff as Assistant Managing Editor and has ably assisted in all aspects of Yearbook preparation;

## INTRODUCTION

- Ms. Judy Freedberg who was again simply invaluable in her capacity of managing editor.

We would like to express our continuing thanks to the Permanent Court of Arbitration which houses the Editorial Staff in its premises in the Peace Palace and to add an additional word of appreciation to its Secretary General, Mr. Tjaco van den Hout, for his cooperation.

In all of its publications, ICCA is advised by ICCA's Editorial Board composed of members and advisory members as follows: Prof. Giorgio Bernini, in his capacity as past President of ICCA; Prof. Karl-Heinz Böckstiegel (Germany); Mr. Robert Coulson (USA); M<sup>e</sup> Yves Derains (France); Dr. Mauro Ferrante (Italy); M<sup>e</sup> Michel Gaudet (France); Prof. Gerold Herrmann (Austria); Prof. Pierre Lalive (Switzerland); DDr. Werner Melis (Austria); Mr. Fali Nariman, President of ICCA (India); Dr. Jan Paulsson (France and as General Editor of the *International Handbook on Commercial Arbitration*); Prof. Tudor R. Popescu (Romania); Prof. José Luis Siqueiros (Mexico); Prof. Iván Szász (Hungary); Prof. Yasuhei Taniguchi (Japan); Prof. Pieter Sanders (Netherlands) and the undersigned as General Editor of the ICCA publications.

The readers of the Yearbook throughout the world are also a major source of the materials which it contains. Therefore, may I call on you, as reader and user of the Yearbook, to submit texts concerning:

- recent changes in arbitration legislation
- newly enacted arbitration rules
- arbitral awards (the confidentiality of which is ensured)
- court decisions of general interest and, in particular, court decisions applying the UNCITRAL Model Law or the New York, European, Washington or Panama Conventions.

The names of the readers who have provided materials for this Volume are acknowledged in the appropriate Parts.

Amsterdam,  
October 2000

Albert Jan van den Berg  
General Editor

## INTRODUCTION

Materials for the Yearbook are to be addressed to the General Editor or to the ICCA editorial staff at their new address at the International Bureau of the Permanent Court of Arbitration as indicated below.

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