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FOR COMMERCIAL ARBITRATION

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GENERAL EDITOR
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INTRODUCTION

It is a pleasure to introduce the twenty-sixth Volume of the Yearbook. Having gone beyond the landmark of a quarter-century, what can be said of the Volume introducing the next era? In many respects, the Yearbook is a continuum, carrying on with its tradition of reporting significant arbitral awards, court decisions and rules of arbitral institutions. The distinguishing features of this Volume thus lie in the details. The attention of the reader may be drawn to recurring themes and issues addressed in the arbitral awards, court decisions and even in the newly drafted or amended arbitration rules.

Part I of the Yearbook continues to reflect the link with ICCA's *International Handbook on Commercial Arbitration*. The Handbook has taken over the role originally fulfilled by Part I of the Yearbook of publishing National Reports and of Part IV, reproducing new arbitration legislation. Thus, Part I reproduces the Table of Contents of the Handbook which currently reports on more than sixty countries. Part IV of the Yearbook now provides summary accounts of Recent Developments in Arbitration Law and Practice. This year it reports on new arbitration laws in Belarus and Madagascar, both closely modelled on the UNCITRAL Model Law on International Commercial Arbitration, as well as the recent changes in Chinese and the Hong Kong Special Administrative Region legislation to ensure the same ease of enforcement of arbitral awards that existed under the 1958 New York Convention before China's resumption of sovereignty over Hong Kong.

Part II – A contains excerpts of arbitral awards made under the auspices of the International Centre for the Settlement of Investment Disputes and its Additional Facility, the International Court of Arbitration of the International Chamber of Commerce, as well as the Arbitration Chamber of Paris and the Netherlands Arbitration Institute. The awards cover a wide variety of procedural and substantive issues. Jurisdictional issues include: ICSID jurisdiction based on a Bilateral Investment Treaty, the applicable procedural rules to the arbitration, conflicting arbitral clauses arising from a “battle of forms”, the requirement to attempt an amicable settlement prior to arbitration, the scope of the arbitration clause and the arbitrability of the application of European competition law. Substantive issues include the frequently contested issues of applicable law to the substance, expropriation, the calculation of damages and interest, as well as timely questions such as the effect of an export embargo due to Bovine Spongiform Encephalopathy (BSE), also known as mad cow disease.

Arbitral institutions regularly review their rules to determine whether they are in line with modern international arbitration practice and adopt amended

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versions of their rules as necessary. Others also look to new areas and means of dispute settlement. These activities are reflected in the rules published this year in Part III – A of the Yearbook. They include the newly amended Rules of the Center for Public Resources Institute for Dispute Resolution, the China International Economic and Trade Arbitration Commission and the International Arbitral Centre of the Austrian Federal Economic Chamber. Also included are the Optional Rules for Disputes Relating to Natural Resources and the Environment of the Permanent Court of Arbitration, which are designed to provide procedures tailored to these specific types of disputes. Part III – A further reproduces the newly amended Conciliation Rules of the Conciliation Centres of the China Council for the Promotion of International Trade/China Chamber of International Commerce, a result of the proliferation of conciliation centers throughout China. Finally, also included are newly adopted International Chamber of Commerce ADR Rules which refer to “amicable dispute resolution”.

Part III – B reports on the Iran-US Claims Tribunal which has been in operation for twenty years. The reporting covers a two-year period, and includes excerpts of two awards between the two governments, both involving questions of treaty interpretation, as well as three awards involving US nationals and the Government of Iran, dealing with procedural and substantive issues.

Besides reproducing in Part II – C the excerpts of court decisions applying the UNCITRAL Model Law on International Commercial Arbitration published in the UNCITRAL publication, CLOUT, court decisions are also reported in Part II – B and in Part V. The latter Part reports on court decisions applying the major multilateral arbitration conventions; the former reports on other leading cases of particular interest. This year, Part II – B includes court decisions from Austria, Canada, Colombia, France, Italy, Singapore, Sweden and Switzerland. They touch on such matters as the obligations of arbitral institutions, the liability of arbitrators, the confidentiality of arbitral proceedings and the arbitral award. Other matters considered include the scope of the submission, execution against the bank account of a diplomatic mission and the consequences of agreeing to ICC arbitration with respect to the Singapore International Arbitration Act.

Part V – A contains decisions from fourteen countries interpreting and applying the 1958 New York Convention. These decisions are divided more or less equally between decisions regarding the enforcement of an arbitration agreement under Art. II(3) of the Convention and decisions regarding the enforcement of an arbitral award under Art. V. Several decisions deal with the enforceability of interim awards on jurisdiction (Supreme Court of Queensland, 27 June 2000, *A.J. Montague v. Commonwealth Devel.* (Australia

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no. 19) and Corte Suprema de Justicia, 26 January and 1 March 1999 (Colombia no. 3)). Further, several courts give their views on how strictly Art. IV, which prescribes the documents which must be submitted with the application for enforcement of the award, should be interpreted (Bundesgerichtshof, 17 August 2000 (Germany no. 52); Hong Kong SAR Court of First Instance, 8 April 2000 (Hong Kong no. 16) and Cour de Justice, 15 April 1999 (Switzerland no. 33)). Other decisions deal with the non-applicability of the New York Convention to setting aside proceedings (USDC, D. Conn., 14 March 2000, *Coutinho Caro v. Marcus Trading* (US no. 340) and USDC, SDNY, 6 December 2000, *C. Frere v. Orthofix* (US no. 352)) and help to clarify the relationship of the grounds for refusal of enforcement with those for setting aside an award (USDC, N.D. Ill., 23 March 2001, *International Ins. v. Caja Nacional de Ahorro y Seguro* (US no. 357) and USDC, SDNY, 11 January 2001, *P.M.I. Trading v. Farstad Oil* (US no. 360)). Unlike recent Volumes, the much-discussed issue of enforcement of awards set aside in the court of origin does not arise, although several courts did consider requests to enforce an award which had been suspended in the country of origin (Cour de Cassation, 17 October 2000 (France no. 31)) or conversely to grant a stay under Art. VI pending a request for setting aside (Supreme Court of Victoria, 20 December 2000, *Toyo v. John Holland* (Australia no. 20)).

Part V – B on the 1961 European Convention and Part V – D on the 1975 Panama Convention each contain two decisions; however, Part V – A on the 1958 New York Convention contains a number of decisions which also refer to these Conventions, as mentioned in the list of subject matters. No court decisions were reported on the 1965 Washington Convention.

In an era of economic and political globalization, knowledge of arbitration law and practice throughout the world becomes increasingly essential to the business and legal communities. In their efforts to contribute to this knowledge by the publication of the Yearbook, ICCA, the General Editor, the Managing Editor and the editorial staff are helped immeasurably by the contributions of its many correspondents throughout the world and I would like to express our appreciation and thank all our correspondents for their efforts.

The staff of the ICCA publications are responsible for the monumental task of collecting and ordering this information. To borrow a quotation cited in Derek Roebuck's fascinating historical work, *Ancient Greek Arbitration*, announced in the Bibliography at p. 1186: "Big book; big trouble." (Callimachus Fragment 465 Pf.). The staff members deserve "big thanks" for their devotion to the "big book":

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- Ms. Alice Siegel, who with great sensitivity for language and style has, as sub-editor, assured that the Yearbook is presented in literate, attractive and consistent format;
- 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 the excellent editorial and translation work, but also, once again, for compiling the Index of Arbitral Awards;
- Ms. Heather Kurzbauer, Assistant Managing Editor, for her contribution to all aspects of the Yearbook preparation and publicity;
- Ms. Judy Freedberg, Managing Editor, whose boundless energy and extraordinary attention for detail regenerates the Yearbook year in, year out and without whom the Yearbook would never come to fruition.

Also on behalf of ICCA, I 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 T. 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^e Yves Derains (France); Dr. Mauro Ferrante (Italy); Prof. Gerold Herrmann (Austria); Prof. Pierre Lalive (Switzerland); DDr. Werner Melis (Austria); Mr. Fali Nariman, President of ICCA (India); Mr. 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 Convention.

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

Brussels,
October 2001

Albert Jan van den Berg
General Editor

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

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