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GENERAL EDITOR
ALBERT JAN VAN DEN BERG

with the assistance of
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INTRODUCTION

In the turbulent two years that have passed since the new millennium, an ever-increasing number of litigants throughout the world have chosen arbitration as a flexible mechanism to resolve complex legal disputes. The millennium marked a change from arbitration in its traditional international commercial setting to the twenty-first-century variant of arbitration in a global knowledge-based framework. Several years into the millennium, the vision permeating ICCA's mission remains the advancement of peaceful dispute settlement in the litigious world of global trade. Since its inception in the mid 1970s, the *Yearbook Commercial Arbitration* strives to fulfill yet another ICCA goal by presenting useful information on arbitration to practitioners and scholars the world over. By providing updated selections of leading arbitral awards, court decisions, arbitration rules, national legislation and other texts and commentary relevant to arbitration, the Yearbook offers the international business and legal community a global perspective on new developments and reoccurring trends.

Part I of the Yearbook reproduces the Table of Contents of the *International Handbook on Commercial Arbitration*, a companion ICCA publication. National Reports originally found in Part I of the Yearbook have provided the basis for the regularly updated Handbook and its supplements. Important information reflecting changes in arbitration law from every corner of the world is summarized in Part IV of the Yearbook, Recent Developments in Arbitration Law and Practice. Legal practitioners offer their insights on new legislation from Bangladesh, Croatia, Singapore, Thailand and Turkey. Part IV closes with an Introduction to the UNCITRAL Model Law on International Commercial Conciliation prepared by UNCITRAL's Secretary, Dr. Jernej Sekolec followed by the full text of the new Model Law.

Part II-A continues in the Yearbook's tradition of excerpting arbitral awards made by arbitral tribunals at leading arbitration institutions. Arbitration has proved to be a useful tool in dispute settlement for 21st century variants of intellectual property law. This year's premier coverage of arbitral decisions on domain name disputes from the World Intellectual Property Organization (WIPO) Arbitration and Mediation Center reflects the emergence of arbitration as a tool serving information technology. Arbitral awards from the International Centre for Settlement of Investment Disputes (ICSID) and its Additional Facility as well as the International Court of Arbitration of the International Chamber of Commerce cover such topics as the conditions precedent to the submission to arbitrate, the waiver of the right to arbitrate and the interpretation of settlement

INTRODUCTION

agreements.

The *Circuit City* decision handed down by the United States Supreme Court in which the court held that the exemption in Part 1 of the Federal Arbitration Act excluding “contracts of seamen, railroad employees or any other class of workers engaged in foreign or interstate commerce” from the scope of the Act is confined to transportation workers, is joined by excerpts of court decisions from Canada and India in Part II-B.

Part II-C focuses exclusively on court decisions applying the UNCITRAL Model Law reported in UNCITRAL’s periodical, *Case Law on UNCITRAL Texts* (CLOUT).

The nature of financial transactions and information exchange has been transformed through the use of information technology, leading to a shift in the way in which the world interacts. The inclusion of Domain Name Dispute Settlement Mechanisms provided by the Internet Corporation for Assigned Names and Numbers (ICANN) and WIPO carries the contemporary theme of dispute resolution in the internet age over to Part III-A, Arbitration Rules.

Another issue high on the international agenda, environmental protection, is reflected by the inclusion of the Permanent Court of Arbitration’s recently adopted Optional Rules for the Conciliation of Disputes Relating to Natural Resources and/or the Environment. In addition, newly adopted Rules of Procedure from the Inter-American Commercial Arbitration Commission (IACAC) and the International Arbitration Rules adopted by the American Arbitration Association (AAA) International Centre for Dispute Resolution are included. Part III-B closes with an introduction to the on-going activities of the Iran-United States Claims Tribunal.

The continuing significance of court decisions on the 1958 New York Convention covering a wide range of issues from around the world reflects the increasing importance of this instrument. Forty of the sixty-two decisions excerpted in Part V-A originate from the United States joined by decisions from France, Germany, India, Italy, Japan, Norway, the Philippines, Spain, Sweden and the United Kingdom. These decisions deal with familiar issues such as the requirement of an arbitration agreement “in writing”, the incorporation of the arbitration agreement in standard conditions or a bill of lading, the applicable law to the form and substance of the arbitration agreement and the scope of the arbitration agreement. Questions of emerging importance include whether a non-signatory is bound by the arbitration agreement and whether an exchange of E-mails constitutes an arbitration agreement in writing. Issues arising in the United States courts in particular include personal jurisdiction over a foreign defendant, whether punitive damages are contrary to public policy, the

INTRODUCTION

availability of pre-award attachment and the arbitrability of seamen's employment contracts under the New York Convention.

Subsequent sections in Part V excerpt court decisions under the Panama Convention 1975 and include updated lists of Contracting States and signatories to the Panama Convention as well as the European Convention 1961 and the Washington Convention 1965.

A comprehensive bibliography announcing recently published books and journals closes the volume.

No publication of this magnitude could be completed without assistance and inspiration from a large number of sources. The editors and staff at ICCA Publications are grateful to correspondents throughout the world for sharing so generously with us their valuable data and practical insights on every aspect of arbitration law.

The staff at ICCA publications are responsible for the ongoing task of collecting and ordering copious quantities of great deal of information. For their commitment throughout the publication process the following staff members deserve acknowledgment:

- Mr. Theodore Mercredi, for adapting so well to his tasks as newly appointed editorial assistant;
- 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, not only for the excellent editorial and translation work and for compiling the Index of Arbitral Awards;
- Ms. Heather Kurzbauer, Assistant Managing Editor, for her significant 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.

Stability and continuity are important factors when working on a volume that reflects a changing world. Thanks to the generosity of the Permanent Court of Arbitration and the steadfast support of its Secretary-General, Tjaco T. van den Hout, the Editorial Staff benefits from both stability and continuity at its home at the Peace Palace.

An extra round of thanks are offered to the PCA's staff members with special mention to information technology officer, Ms. Karen Franz, for her patient

INTRODUCTION

assistance in solving the inevitable computer-related problems. I would also like to draw attention to the recently initiated PCA intern program, one of many innovations introduced at the PCA by its Secretary-General, whose participants have offered well-informed and enthusiastic assistance in procuring materials, drafting and providing insight into their legal systems. They include Mr. Amrin Amin (Singapore), Ms. Cynthia Casiño (the Philippines), Ms. Wei Ling Cheah (Malaysia), Mr. Omar Mondragon (Mexico) and Mr. Adam McGrath (Australia).

The year 2002 marked the 16th ICCA Congress in London (12-15 May) at which hundreds of scholars and legal practitioners debated fascinating topics such as “The Parties, not the Arbitrators, Control the Arbitration” and examined important contemporary questions currently being addressed at UNCITRAL on the requirement of a written form for an arbitration agreement, interim measures of protection and the need for a model law on conciliation, a question which UNCITRAL has answered in the affirmative. Other subjects such as aspects of illegality both in the formation of contracts and in the conduct of arbitration and arbitration under investment treaties were the focus of discussion.

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 (Italy); Mr. Fali Nariman, in his capacity as past President of ICCA (India); Prof. Karl-Heinz Böckstiegel (Germany); Mr. Robert Coulson (USA); M^e Yves Derains (France); Dr. Mauro Ferrante (Italy); Prof. Gerold Herrmann, President of ICCA (Austria); Prof. Pierre Lalive (Switzerland); DDr. Werner Melis (Austria); 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 ICCA publications.

Two recent additions to Kluwer Law International’s electronic product line, the online database <www.KluwerArbitration.com> and the *Arbitration CD-ROM: Resources on International Commercial Arbitration* provide the arbitration community with easy access to materials from the three major ICCA publications: the *Yearbook Commercial Arbitration*, the *International Handbook on Commercial Arbitration* and the *ICCA Congress Series*.

Before closing, I would like to again ask you a favour. Throughout the publication’s history, readers throughout the world have been a major source of material. Therefore, may I continue to call on you, as reader and Yearbook user, to submit texts concerning:

INTRODUCTION

- 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.

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

Brussels
November 2002

Albert Jan van den Berg
General Editor

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.

ICCA Publications
c/o International Bureau of the
Permanent Court of Arbitration
Carnegieplein 2
2517 KJ The Hague
The Netherlands
E-mail: icca@pca-cpa.org
info@arbitration-icca.org

Prof. Dr. Albert Jan van den Berg
c/o Hanotiau & van den Berg
IT Tower, 9th Floor
480 Avenue Louise, B.9
1050 Brussels
Belgium
E-mail: ajvandenbergh@hvdvdb.com

TABLE OF CONTENTS

VOLUME XXVII – 2002

Introduction

Prof. Dr. Albert Jan van den Berg, General Editor v

Table of Contents xi

Part I – National Reports 1

Note General Editor

Table of Contents of *International Handbook on Commercial Arbitration* 1

Part II – A. Arbitral Awards 11

International Centre for Settlement of Investment Disputes (ICSID)

• Procedural Order No. 2 [request for provisional measures] of 28 October 1999, Decision of the Tribunal on Objections to Jurisdiction of 25 January 2000, Award of 13 November 2000 in case no. ARB/97/7

Maffezini v. The Kingdom of Spain 13

• Decision on Jurisdiction of 8 August 2000 and Award of 26 July 2001 in case no. ARB/98/5

Olguín v. The Republic of Paraguay 48

• Award of 25 June 2001 in case no. ARB/99/2
Genin v. The Republic of Estonia 61

• Award of 15 March 2002 in case no. ARB/00/2
Mihaly International Corporation v. Sri Lanka 84

International Centre for Settlement of Investment Disputes (ICSID)

(Additional Facility)

• Award of 2 June 2000 in case no. ARB(AF)/98/2;
Decision of 8 June 2001 in case no. ARB(AF)/00/3
Waste Management Inc. v. The United Mexican States 98

Yearbook Comm. Arb'n XXVII (2002) xi

TABLE OF CONTENTS

• Award of 18 September 2000 in case no. ARB(AF)/98/1 <i>Lemire v. The Government of Ukraine</i>	133
<i>International Chamber of Commerce (ICC)</i>	
• Case no. 7893 of 1994, interim award	139
• Case no. 9427 of 1998, final award	153
• Case no. 9466 of 1999, final award	170
• Case no. 9787 of 1998, partial award	181
<i>World Intellectual Property Organization (WIPO) Arbitration and Mediation Center</i>	
• Case no. D99-0001 of 14 January 2000 <i>World Wrestling Federation Entertainment, Inc. v. Michael Bosman</i>	189
• Case no. D2000-0003 of 18 February 2000 <i>Telstra v. Nuclear Marshmallows</i>	194
• Case no. D2000-0044 of 16 March 2000 <i>Educational Testing Service v. TOEFL</i>	201
• Case no. D2000-0204 of 20 May 2000 <i>Penguin Books Limited v. The Katz Family</i>	209
• Case no. D2000-0210 of 29 May 2000 <i>Julia Fiona Roberts v. Russel Boyd</i>	214
Index of Arbitral Awards	219
<i>Introduction</i>	219
<i>Index of Arbitral Awards</i>	220
Part II – B. Court Decisions on Arbitration	225
<i>Canada</i>	
• Supreme Court of British Columbia, 31 October 2001 <i>The United Mexican States v. Metalclad Corporation</i>	227
<i>India</i>	
• Supreme Court of India, 13 March 2002	

TABLE OF CONTENTS

<i>Bhatia International v. Bulk Trading S.A., et al.</i>	234
<i>United States</i>	
• Supreme Court of the United States, 21 March 2001	
<i>Circuit City Stores, Inc. v. Adams</i>	249
Part II – C. Court Decisions Applying the UNCITRAL Model Law	259
<i>Case Law on UNCITRAL Texts (CLOUT)</i>	261
<i>Germany</i>	
• Case 401: Bayerisches Oberstes Landesgericht, 11 August 2000	262
• Case 402: Bayerisches Oberstes Landesgericht, 16 March 2000	263
• Case 403: Bayerisches Oberstes Landesgericht, 15 December 1999	264
• Case 404: Bundesgerichtshof, 14 September 2000	265
• Case 405: Oberlandesgericht Hamm, 10 February 1999	266
• Case 406: Bundesgerichtshof, 3 April 2000	267
• Case 407: Bundesgerichtshof, 2 November 2000	269
• Case 408: Oberlandesgericht Düsseldorf, 23 March 2000	270
<i>Index of Articles</i>	272
Part III – A. Arbitration Rules	279
<i>American Arbitration Association (AAA) International Centre for Dispute Resolution</i>	
• The AAA ICDR International Arbitration Rules, by Luis M. Martinez	281
• International Arbitration Rules, 1 November 2001	282
<i>Domain Name Dispute Resolution Mechanisms</i>	
• Domain Name Dispute Resolution Mechanisms, by Francis Gurry <i>Internet Corporation for Assigned Names and Numbers (ICANN)</i>	299
• Uniform Domain Name Dispute Resolution Policy, 24 October 1999	305
• Rules for Uniform Domain Name Dispute Resolution Policy,	
Yearbook Comm. Arb'n XXVII (2002)	xiii

TABLE OF CONTENTS

24 October 1999	311
<i>World Intellectual Property Organization (WIPO),</i>	
• Supplemental Rules for Uniform Domain Name Dispute Resolution Policy, 1 December 1999	324
<i>Inter-American Commercial Arbitration Commission (IACAC)</i>	
• Introduction, by Adriana Polania	331
• Rules of Procedure, 1 April 2002	333
• IACAC's Internal Administrative Procedures for Cases Administered under Its Own Rules	349
<i>Permanent Court of Arbitration (PCA)</i>	
• The PCA Environmental Conciliation Rules, by Tjaco T. van den Hout	353
• Optional Rules for Conciliation of Disputes Relating to Natural Resources and/or the Environment, 16 April 2002	357
Part III – B. Iran-US Claims Tribunal	369
<i>Introduction</i>	371
Part IV – Recent Developments in Arbitration Law and Practice	373
<i>Introduction</i>	375
<i>Bangladesh</i>	376
<i>Croatia</i>	381
<i>Singapore</i>	386
<i>Thailand</i>	390
<i>Turkey</i>	393
<i>UNCITRAL</i>	
• Introduction to the UNCITRAL Model Law on International Commercial Conciliation, by Jernej Sekolec	398
• Model Law on International Commercial Conciliation	414

TABLE OF CONTENTS

Part V – A. Court Decisions on the New York Convention 1958	421
<i>Introduction</i>	423
<i>List of Contracting States (as of 12 November 2002)</i>	426
<i>France</i>	
• No. 32. Cour d’Appel, Paris, 22 March 2001 <i>Russian Federation v. Compagnie NOGA d’Importation et d’Exportation</i>	433
• No. 33. Cour d’Appel, Paris, 28 June 2001 <i>Abrahim Rahman Golshani v. The Government of the Islamic Republic of Iran, Bureau for International Legal Services</i>	439
<i>Germany</i>	
• No. 53. Bayern Oberlandesgericht, 16 March 2000 <i>Russian seller v. German Buyer</i>	445
• No. 54. Bayern Oberlandesgericht, 11 August 2000 <i>Company X v. Company Y</i>	451
<i>India</i>	
• No. 35. Bombay (Mumbai) High Court, 19 November 1999 <i>Faircot S.A. v. Tata SSI Ltd.</i>	455
• No. 36. Supreme Court, 4 May 2001 <i>Fuerst Day Lawson Ltd. v. Jindal Exports Ltd.</i>	466
• No. 37. Supreme Court, 20 August 2001 <i>Owners, etc. “Baltic Confidence” v. State Trading Company of India, et al.</i>	478
• No. 38. Supreme Court, 31 August 2001 <i>Smita Conductors Ltd. v. Euro Alloys Ltd.</i>	482
<i>Italy</i>	
• No. 158. Corte di Cassazione, 21 January 2000 <i>De Maio Giuseppe e Fratelli snc v. Interskins Ltd.</i>	492
• No. 159. Corte di Cassazione, 16 November 2000 <i>Conceria Madera srl v. Fortstar Leather Ltd.</i>	500
• No. 160. Corte di Cassazione, 22 December 2000 <i>Granitalia v. Agenzia Marittima Sorrentini</i>	506
• No. 161. Corte di Cassazione, 26 June 2001 <i>American Bureau of Shipping v. Tencara S.p.A.</i>	509
Yearbook Comm. Arb’n XXVII (2002)	xv

TABLE OF CONTENTS

Japan

- No. 8. District Court, Yokohama, 25 August 1999
Chinese seller v. Japanese buyer 515

Norway

- No. 1. Hålogaland Court of Appeal, 16 August 1999
Charterer v. Shipowner 519

Philippines

- No. 1. Second Division, Republic of the Philippines
Supreme Court, 26 April 1990
*National Union Fire Insurance Company of Pittsburgh v. Stolt-Nielsen
Philippines, Inc.* 524

Spain

- No. 33. Tribunal Supremo, 16 April 1996
Activial Internacional SA v. Conservas El Pilar SA 528
- No. 34. Tribunal Supremo, 17 February 1998 RJ 1998/760
Unión de Cooperativas Agrícolas Epis-Centre v. La Palentina SA 533
- No. 35. Tribunal Supremo, 5 May 1998
ETS Louis Zanatta v. Pillanet 540
- No. 36. Tribunal Supremo, 26 May 1998
Not indicated v. not indicated 543
- No. 37. Tribunal Supremo, 7 July 1998
Unión de Cooperativas Agrícolas Epis-Centre v. Agucersa SL 546

Sweden

- No. 5. Svea Court of Appeal, 21 March 2001
American Pacific Corporation v. Sydsvensk Produktutveckling AB et al. 551
- No. 6. Svea Court of Appeal, 7 September 2001
Planavergne S.A. v. Kalle Bergander i. Stockholm AB 554

United Kingdom

- No. 59. Court of Appeal, Civil Division, 15 February 2002
Capital Trust Investment Limited v. Radio Design AB, et al. 557
- No. 60. Court of Appeal, Civil Division, 18 April 2002
Yukos Oil Company v. Dardana Limited 570

TABLE OF CONTENTS

United States

- No. 363. United States District Court, Eastern District of Louisiana, 3 November 2000
Feliciano Lejano, et al. v. K.S. Bandak Assuranceforeningen Gard, et al. 593
- No. 364. United States District Court, Eastern District of Louisiana, 17 May 2001
United States Court of Appeals, Fifth Circuit, 4 June 2002
Ernesto Francisco v. M./T. Stolt Achievement, et al. 600
- No. 365. United States District Court, District of Columbia, 30 May 2001
Compagnie d'Enterprises CFE, S.A. v. Republic of Yemen 613
- No. 366. United States District Court, Northern District of California, 1 June 2001
Dandong Shuguang Axel Corporation, Ltd. v. Brilliance Machinery Company, et al. 617
- No. 367. United States District Court, Northern District of Illinois, Eastern Division, 5 June 2001
CNA Reinsurance Company Limited. v. Trustmark Insurance Company 626
- No. 368. United States District Court, Eastern District of Pennsylvania, 13 June 2001
Stephen Federico v. Charterers Mutual Assurance Association Ltd. 635
- No. 369. United States District Court, Central District of California, 14 June 2001
China National Metal Products Import/Export Company v. Apex Digital, Inc. 647
- No. 370. United States District Court, Southern District of New York, 18 July 2001
Intertec Contracting A/S, et al. v. Turner Steiner International, SA, et al. 656
- No. 371. United States District Court, Eastern District of Louisiana, 23 July 2001, 15 October 2001 and 23 November 2001
Tobias D. Gavino v. Eurochem Italia 672
- No. 372. United States Court of Appeals, First Circuit, 27 June 2001 as amended 30 July 2001
First State Insurance Company v. Banco de Seguros del Estado 680
- No. 373. United States District Court, Southern District of New York, 30 July 2001

TABLE OF CONTENTS

<i>Thixomat, Inc. v. Takata Physics International, Co., Ltd.</i>	685
• No. 374. United States District Court, Southern District of New York, 27 August 2001 <i>In re The Singer Company N.V., et al.; Joseph A. Pardo as Trustee for The Singer Creditor Trust v. Akai Electric Company Limited</i>	690
• No. 375. United States Court of Appeals, Second Circuit, 28 August 2001 <i>Sphere Drake Insurance Limited v. Clarendon National Insurance Company, et al.</i>	700
• No. 376. United States District Court, Southern District of New York, 5 September 2001 <i>Monegasque de Reassurances s.a.m. (Monde Re) v. NAK Naftogaz of Ukraine and State of Ukraine</i>	710
• No. 377. United States District Court, Southern District of New York, 10 September 2001 <i>CME Media Enterprises B.V. v. Dr. Vladimir Zelezny</i>	721
• No. 378. United States District Court, Southern District of New York, 24 September 2001 <i>Dardana Limited v. AO Yuganskneftegaz and Yukos Oil Company</i>	727
• No. 379. United States Court of Appeals, Second Circuit, 26 September 2001 <i>Brian M. Freeman v. Joseph D. Pike, et al.</i>	735
• No. 380. United States District Court, Southern District of New York, 27 September 2001 <i>Arhontisa Maritime Ltd. v. Twinbrook Corp. and Constantine D. Nicopoulos</i>	752
• No. 381. United States District Court, Southern District of New York, 28 September 2001 <i>First Eagle SoGen Funds, Inc. v. Bank for International Settlements</i>	759
• No. 382. United States Bankruptcy Court, District of Delaware, 28 September 2001 <i>In re Harnischfeger Industries, Inc., et al.; Beloit Corporation, et al. v. Asia Pulp & Paper Company, Ltd., et al.</i>	764
• No. 383. United States District Court, District of Colorado, 11 October 2001 <i>James Associates (USA) Ltd. v. Anhui Machinery & Equipment Import and Export Corporation</i>	769

TABLE OF CONTENTS

• No. 384. United States District Court, Eastern District of Louisiana, 12 October 2001 <i>Wilfredo Jaranilla v. Megasea Maritime Ltd., et al.</i>	775
• No. 385. United States Court of Appeals, Third Circuit, 15 October 2001 <i>Rhône Poulenc Fiber and Resin Intermediates S.A.S., et al. v. E.I. DuPont de Nemours and Company</i>	779
• No. 386. United States Court of Appeals, Third Circuit, 31 October 2001 <i>Deutz AG v. General Electric Company</i>	795
• No. 387. United States District Court, Southern District of Texas, Houston Division, 4 December 2001 <i>Karaha Bodas Company L.L.C. v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara</i>	814
• No. 388. United States District Court, District of Connecticut, 11 December 2001 <i>Signature Marketing Pty. Ltd., et al. v. Slim Print International LLC, et al.</i>	839
• No. 389. United States District Court, District of Minnesota, 17 December 2001 <i>Northwest Airlines, Inc. v. R&S Company S.A., et al.</i>	849
• No. 390. United States District Court, Eastern District of Louisiana, 21 December 2001 <i>Andy Ballester, et al. v. Thor Shipping, Ltd., et al.</i>	858
• No. 391. United States District Court, Southern District of New York, 8 January 2002 <i>Louise Henry v. Patrick J. Murphy</i>	863
• No. 392. United States District Court, Eastern District of Louisiana, 8 January 2002 <i>Nissho Iwai Corp., et al. v. M/V Joy Sea, etc., et al.</i>	869
• No. 393. United States District Court, Eastern District of Louisiana, 15 January 2002 <i>Italtrade International USA L.L.C., et al. v. Sri Lanka Cement Corporation, et al.</i>	876
• No. 394. United States District Court, Southern District of Texas, Galveston Division, 17 January 2002 <i>Mourik International B.V. v. Reactor Services International, Inc., et al.</i>	881
Yearbook Comm. Arb'n XXVII (2002)	xix

TABLE OF CONTENTS

• No. 395. United States Bankruptcy Court, Eastern District of Pennsylvania, 22 February 2002 <i>In re Reliance Group Holdings, Inc., et al.; M. Diane Koken, etc. v. Reliance Group Holdings, Inc.</i>	889
• No. 396. United States District Court, District of Connecticut, 5 March 2002 <i>Hartford Accident & Indemnity Co., et al. v. Equitas Reinsurance Ltd., et al.</i>	893
• No. 397. United States Court of Appeals, Fourth Circuit, 6 March 2002 <i>Base Metal Trading, Limited v. OJSC Novokuznetsky Aluminum Factory</i>	902
• No. 398. United States Court of Appeals, Fifth Circuit, 19 March 2002 <i>Fred E. Beiser v. Ibolya Weyler, et al.</i>	909
• No. 399. United States Court of Appeals, Ninth Circuit, 26 March 2002 <i>Glencore Grain Rotterdam B.V. v. Shivnath Rai Harnarain Company</i>	922
• No. 400. United States District Court, Northern District of Illinois, Eastern Division, 27 March 2002 <i>Abbott Laboratories v. Baxter International, Inc.</i>	936
• No. 401. United States District Court, Southern District of New York, 28 March 2002 <i>Millicom International V N.V. v. Motorola, Inc., et al.</i>	948
• No. 402. Court of Appeal of Florida, Third District, 1 May 2002 <i>Benefit Association International, Inc. v. Mount Sinai Comprehensive Cancer Center</i>	960
Part V – B. Court Decisions on the European Convention 1961	967
<i>List of Contracting States and Signatories (as of 9 October 2002)</i>	970

TABLE OF CONTENTS

Part V – C. Court Decisions on the Washington Convention 1965	973
<i>List of Contracting States and Signatories (as of 1 November 2002)</i>	975
Part V – D. Court Decisions on the Panama Convention 1975	983
<i>List of Contracting States (as of 1 October 2002)</i>	985
<i>Excerpts of Court Decisions</i>	
<i>United States</i>	
• No. P11. United States Court of Appeals, Ninth Circuit, 12 February 2002, No. 00-56768 <i>Iseki v. Empresa Constructora Contex Limitada</i>	987
• No. P12. United States Court of Appeals, Seventh Circuit, 7 June 2002, No. 00 C 6703 <i>International Insurance Company v. Caja Nacional de Ahorro y Seguro</i>	990
Part VI – Articles on Arbitration	1001
Part VII – Bibliography	1003
<i>I. General</i>	1005
<i>II. Countries</i>	1021
<i>III. Journals on Arbitration</i>	1031
List of ICCA Officers and Members	1041