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FOR COMMERCIAL ARBITRATION

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GENERAL EDITOR
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INTRODUCTION

Once again, we are looking back over a year during which arbitration law and practice have undergone many developments and changes – so many that even a strict selection of material has yielded a hefty Yearbook volume of over 1300 pages.

Sadly, this past year has been marked by the death of two members of ICCA, M^e Michel Gaudet and Mr. Michael Hoellering. They will be greatly missed.

In reporting on the year's developments, the Yearbook retains its familiar printed format. However, the Yearbook, along with ICCA's *International Handbook on Commercial Arbitration* and selected volumes of ICCA's *Congress Series* are also available in electronic form to subscribers to Kluwer Law International's *Arbitration CD-Rom: Resources on International Commercial Arbitration* and the online service www.KluwerArbitration.com.

The *International Handbook on Commercial Arbitration*, a companion publication to the Yearbook, evolved from the National Reports originally found in Part I of the Yearbook and the reporting on new arbitration legislation found in Part IV of the Yearbook. The Handbook presently contains National Reports on arbitration law and practice, along with relevant legal texts, covering more than sixty countries. Part I of the Yearbook reproduces the most recent Table of Contents of the Handbook and Part IV of the Yearbook provides, inter alia, a summary of the salient features of the new arbitration acts of Azerbaijan, Jordan, Paraguay and Zambia and refers to the Handbook where this new legislation will be reproduced in full.

Part II-A continues in the Yearbook's tradition of excerpting arbitral awards made under the auspices of a variety of arbitral tribunals. As a reflection of the recent trend among arbitral institutions to adopt summary or expedited procedures, an award of the Netherlands Arbitration Institute made under its Summary Arbitral Proceedings Rules and two awards of the Arbitration Chamber of Paris, made under its Rapid Arbitration Procedure (PAR) are included. A selection of illustrative decisions on domain name disputes from the World Intellectual Property Organization (WIPO) Arbitration and Mediation Center is also included. The remainder of Part II-A consists of the partial and final awards made under the auspices of the Permanent Court of Arbitration in the arbitration between a number of former private shareholders and the Bank for International Settlements and a selection of awards from the International Court of Arbitration of the International Chamber of Commerce (ICC). While the Yearbook has reported fully in the past on awards and decisions made under

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auspices of the International Centre for Settlement of Investment Disputes (ICSID) and its Additional Facility, the proliferation of these awards in the past year and their availability in full text on the ICSID website, www.worldbank.org/icsid, as well as their publication in ICSID Review – Foreign Investment Law Journal and other online and paper publications have led to the decision to no longer attempt to report these decisions and awards in extenso. Suggestions from readers of the Yearbook as to whether they would like this reporting to be continued and in what form would be welcomed.

Part II-B includes a decision of the French Court of Appeal, *inter alia*, refusing enforcement of a procedural order of an arbitral tribunal, and two US decisions dealing, respectively, with arbitration clauses in software downloads and the division of jurisdiction between the courts and arbitrators.

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

The ICSID and ICSID Additional Facility Rules have undergone a major review and revision. These changes are surveyed in an Introduction by Antonio R. Parra in Part III-A, followed by the ICSID and ICSID Additional Facility Rules as in force 1 January 2003. New and revised rules of the American Arbitration Association (AAA) International Centre for Dispute Resolution, the Arbitration Chamber of Paris, the Indonesian National Board of Arbitration (BANI) and the International Chamber of Commerce are also reproduced.

The reporting this year on the Iran-US Claims Tribunal in Part III-B contains an excerpt of the last award to be made by a Chamber between a private party and the Islamic Republic of Iran, thus completing an important phase of the work of the Tribunal. Claims between the two States still remain to be decided.

This year, Part V-A includes this year a Consolidated Commentary Volumes XXII-XVII by the General Editor commenting on the interpretation and application of the 1958 New York Convention in over 300 cases. Furthermore, 54 new decisions are reported in this volume coming from Australia, Canada, Hong Kong, India, Italy, The Netherlands, Norway, Switzerland, the United Kingdom and the United States, the latter comprising forty-two decisions. The reporting includes court decisions from Hong Kong (two instances) and the United States (four instances) relating to the enforcement of the arbitral award in *Karaha Bodas v. Pertamina*. These decisions, as well the Indian decision of the High Court of Gujarat, address the question of the competent court to set aside an arbitral award.

Subsequent sections in Part V excerpt court decisions under the 1965 Washington and 1975 Panama Conventions and include updated lists of Contracting States and Signatories to these Conventions well as the 1961

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European Convention.

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

No publication of this magnitude could be compiled without a worldwide circle of friends who generously provide material and assistance in order to keep the Yearbook up-to-date and informed. The General Editor and the ICCA Editorial Staff are grateful to correspondents throughout the world for their invaluable contributions without which the Yearbook could not function as a comprehensive and reliable source of information on arbitration law and practice.

The ICCA Editorial Staff are responsible for the ongoing task of collecting and ordering copious quantities of information. Each of them contributes to the complicated and demanding process of annually producing the Yearbook. My thanks and appreciation go to:

- Mr. Theodore Mercredi in his capacity as editorial assistant;
- Ms. Alice Siegel, who, as sub-editor, assured that the Yearbook is presented in a literate, attractive and consistent format;
- D.ssa Silvia Borelli, not only for the excellent editorial and translation work, but also for assuming the task of reviewing and coordinating all 1958 New York Convention decisions;
- Ms. Heather Kurzbauer, Assistant Managing Editor, for her continuing contribution to all aspects of Yearbook preparation and publicity;
- Ms. Judy Freedberg, Managing Editor, who, guiding and inspiring her colleagues, carries the publication of the Yearbook forward each year.

On behalf of ICCA, thanks go to the Permanent Court of Arbitration and its Secretary-General, Tjaco T. van den Hout, for hosting the Editorial Staff at the headquarters of its International Bureau at the Peace Palace. The administrative and technical support of the entire PCA staff is greatly appreciated.

The papers emanating from the 16th ICCA Congress held in London on 12-15 May 2002 have been published under the title: *International Commercial Arbitration: Important Contemporary Questions* (see the announcement in the Bibliography at pp. 1387-1423).

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);

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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. 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.

Since the inception of the Yearbook, 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:

- 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 2003

Albert Jan van den Berg
General Editor

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