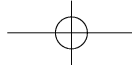


INTERNATIONAL COUNCIL
FOR COMMERCIAL ARBITRATION

YEARBOOK
COMMERCIAL ARBITRATION
VOLUME XXIX – 2004

GENERAL EDITOR
ALBERT JAN VAN DEN BERG

with the assistance of
International Bureau of the
Permanent Court of Arbitration
The Hague



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INTRODUCTION

For ICCA, the year 2004 was marked by the 17th ICCA Conference, hosted by CIETAC, on 16-18 May in Beijing. This well-attended and well-organized Conference brought together arbitration practitioners from throughout the world to participate in an exchange of ideas on issues ranging from the current status of arbitration practice in China to the enforceability of arbitral awards. The voluminous contents of this year's Yearbook reflect a similar breadth of scope, providing information on a great variety of sources.

The XXIXth volume of the Yearbook retains its traditional printed format. In addition, in collaboration with its publisher, Kluwer Law International, the Yearbook, along with ICCA's *International Handbook on Commercial Arbitration* and selected volumes of ICCA's *Congress Series*, are made available by subscription in two electronic formats as part of the materials on the *Arbitration CD-Rom: Resources on International Commercial Arbitration* and the online service <www.KluwerArbitration.com>.

The *International Handbook on Commercial Arbitration* functions alongside the Yearbook in providing up-to-date information on arbitration law and practice in more than sixty countries. National Reports together with the relevant legal texts are published in the Handbook. The Table of Contents of the Handbook is reproduced in Part I of the Yearbook where, until the introduction of the Handbook, National Reports were published. Thus, the reader will find arbitral awards, rules and leading court decisions from a broad range of countries and institutions in the Yearbook, and National Reports and legislation on arbitration in the Yearbook's companion publication, the Handbook. In addition, Part IV of the Yearbook, entitled *Recent Developments on Arbitration Law and Practice*, provides a summary of the salient features of newly enacted arbitration legislation, this year reporting on Croatia, Japan and Spain.

The contents of Part II – A of this Yearbook constitute a major change in the reporting and documentation of arbitral awards. Arbitral institutions are increasingly making awards and decisions made under their auspices available online on their websites or in their printed publications. In response to this universal availability, the Yearbook has become more selective, publishing relevant awards from sources which otherwise are not readily available. This year's selection includes awards from the International Chamber of Commerce and the Netherlands Arbitration Institute. The awards deal with familiar issues such as the applicable law to the contract and its formation, the requirement of an arbitration agreement in writing, the State as a party to arbitration and sovereign immunity from jurisdiction, the application of the 1980 UN Sales

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Convention, error, fraudulent inducement and liquidated damages.

Part II – B reports two Canadian court decisions, both declining to set aside awards made in connection with NAFTA Chapter Eleven; a decision of the French Court of Appeal determining that an action to set aside an order made in an ICC Pre-arbitral Referee Procedure is not admissible; a decision of the Swiss Federal Supreme Court holding that the Court of Arbitration of Sport is an independent arbitral tribunal with respect to making awards involving decisions of the International Olympic Committee and finally three decisions relating to arbitration of the United States Supreme Court concerning whether the court or the arbitral tribunal should determine the arbitrability of procedural issues, the compensatory or punitive nature of statutory treble damages, and the scope of the expression “involving commerce” which limits the applicability of the Federal Arbitration Act.

Recently introduced or amended rules of the American Arbitration Association, the Chamber of National and International Arbitration of Milan, the International Chamber of Commerce, the Japan Commercial Arbitration Association, the Tokyo Maritime Arbitration Commission of the Japan Shipping Exchange and the Swiss Chamber of Commerce are reproduced in Part III – A. They include rules for arbitration, conciliation, expedited procedures, small claims, large complex cases, interim measures and acting as appointing authority under the UNCITRAL Rules, as well as codes of ethics. Also reproduced are the revised American Arbitration Association and American Bar Association 2004 Code of Ethics for Arbitrators in Commercial Disputes, the newly issued International Bar Association Guidelines on Conflicts of Interest in International Arbitration and the International Law Association Recommendations on the application of public policy.

A major part of the Yearbook reporting consists in the documentation of court decisions applying the 1958 New York Convention. This year, Part V – A reports the decisions in seventy-two cases from ten countries. While, as usual, the majority of cases reported comes from courts in the United States, the reporting this year includes seventeen German cases dating from 1998 to 2003. Recurring issues in the decisions are stay of enforcement proceedings pending annulment proceedings, waiver of rights and estoppel, nonsignatory to arbitration clause, sovereign immunity, authentication, certification and translation of the award and arbitration agreement and the more-favourable-right provision. Issues relating in particular to US decisions include the arbitrability of seamen’s employment contracts under the New York Convention as well as removal to federal court and remand to state court.

Part V – D reports three US decisions applying the 1975 Panama Convention,

INTRODUCTION

in line with the trend of an increasing number of courts applying this Convention. Each component of Part V (Part V – A on the 1958 New York Convention, Part V – B on the 1961 European Convention, Part V – C on the 1965 Washington Convention, and Part V – D on the 1975 Panama Convention) contains an up-to date list of Contracting States and Signatories to the respective Convention. In addition, Part V – A also contains an Index of Cases Reported in Volume XXIX (2004) which links the cases to the Commentaries on the New York Convention prepared by the General Editor (see Volume XXVIII (2003) for the most recent Commentary).

The Volume concludes with a list of journals on arbitration and a bibliography announcing recently published books relating to general topics in arbitration and individual countries and regions. This year's selection demonstrates the trend towards the increased dissemination of arbitral awards and includes a number of collections of published awards and decisions emanating from institutions as diverse as the America's Cup Arbitration Panel and the International Chamber of Commerce.

The worldwide network of correspondents who generously provide assistance and material for the Yearbook is an essential element in the compilation and editing of the Yearbook. The correspondents are too numerous to thank individually in this Introduction. They are mentioned and acknowledged in the Introductions to the various Parts and in footnotes where appropriate.

The ICCA Editorial Staff works throughout the year to collect and process the contents of the Yearbook. I would like to express my thanks and appreciation to each of them for their valuable contributions:

- Ms. Alice Siegel, who, as sub-editor, assured that the Yearbook is presented in a literate, consistent and attractive format;
- D.ssa Silvia Borelli, who this year has not only reviewed and coordinated all 1958 New York Convention decisions, but also demonstrated her extraordinary language talents by translating texts from Dutch, French, German, Italian and Spanish into impeccable English.
- Ms. Judy Freedberg, Managing Editor, who unfailingly steered the Yearbook through its annual voyage.

On behalf of ICCA, continuing 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.

INTRODUCTION

In all of its publications, ICCA is advised by ICCA's Editorial Board. The Editorial Board is presently composed of Dr. Gerold Herrmann, President of ICCA (Austria); Mr. Antonio Parra, Secretary-General of ICCA (United States); Mr. Jan Paulsson, General Editor, *International Handbook on Commercial Arbitration* (France); Mr. Martin Hunter (United Kingdom) and the undersigned as General Editor of the ICCA publications.

A word of thanks goes to the former members of the Editorial Board for their many contributions: 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. Pierre Lalive (Switzerland); DDr. Werner Melis (Austria); Prof. José Luis Siqueiros (Mexico); Prof. Iván Szász (Hungary); Prof. Yasuhei Taniguchi (Japan) and Prof. Pieter Sanders (Netherlands).

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.

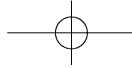
Brussels
October 2004

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 respective addresses as indicated below.

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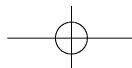
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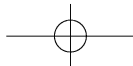
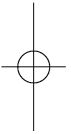
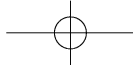


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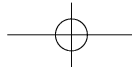


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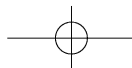


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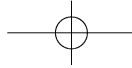


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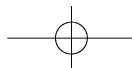


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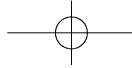


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