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Symposium Address

By GEORGE W. COOMBE JR.*

I. INTRODUCTION

This Symposium, addressing emerging issues in transnational dispute resolution, is both timely and relevant. Publication follows the October 1994 Joint Colloquium and Seminar on International Arbitration, held in San Francisco, sponsored by three leading international conciliation and arbitration institutions—the ICC International Court of Arbitration, the American Arbitration Association, and the Center for Settlement of International Investment Disputes. The several subjects addressed here by the distinguished contributing commentators are intended to provide pragmatic insights and helpful references for consideration and application by law students, law faculty, and practicing lawyers, thereby producing additional perspective to the resolution of transnational disputes, both public and private.

Publication of these important articles by the *Hastings International and Comparative Law Review* is most appropriate. *Hastings College of the Law* has been a prominent participant in forging academic and professional rapport with other professional institutions, particularly in Asia, for the study of comparative and international law and of the influence of national jurisprudential systems upon regional and international organizations. Consideration of the resolution of transnational commercial disputes, derived from underlying commercial transactions, has been and continues to be an important attendant concern of that study, reflective of governmental and business expectations responsive to expanding trade and investment opportunities.

The advent of profound political, social, and cultural change within the European Community (Europe 1992) and throughout Eastern Europe, the North American continent (North American Free Trade Agreement), and Asia (Asia-Pacific Economic Forum), has

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been accompanied by the expansion of free societies and the ongoing transition from socialism to capitalism. Interestingly, the resolution of transnational business disputes closely relates to such change. Thus, expanding political freedom will motivate international, regional, and national support for trade and investment; in turn, business dispute mechanisms will expand and gain legislative and regulatory recognition. It is reasonable to anticipate an appropriate and sympathetic response by national civil justice systems to encourage the process.

The evolving nature and complexity of underlying transnational business transactions corresponds to this changing global environment. Today, the complexity of transnational commercial transactions reflects a willingness of the parties to create and sustain a comprehensive endeavor in the expectation of mutual economic benefit extended over a substantial period of time. These contemporary endeavors are far more complex than the simple and discrete undertakings identified with the business world which existed prior to the 1957 Treaty of Rome. Commercial disputes derived from these earlier transactions were resolved within specialized industries (such as international shipping and insurance) or through institutional or ad hoc international commercial arbitration. In short, the nature of the underlying transactions permitted a convenient framework for dispute resolution by settlement, arbitration, or litigation; dispute resolution techniques related to discrete transactions, producing win-lose, yes-no resolution of precisely framed issues. Contrast the situation today, where disputes typically arise within the context of joint ventures between two or more transnationals to establish Research and Development (R&D), marketing, or manufacturing facilities in a third country; joint ventures between private investors and state-owned enterprises for large-scale industrial and agribusiness developments in the Third World; co-financing projects involving the World Bank, the International Finance Corporation, private investors, and state and parastatal enterprises; and participation agreements in natural resources projects.

Today, expectations of the parties to such transnational transactions must, of necessity, include the probability that disputes will arise in direct relationship to the complexity and duration of the mutual undertakings. This Symposium responds to those expectations and the continuing need for decent resolution of transnational business disputes.