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Settlement of Investment Disputes**



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**MAKING THE MOST OF INTERNATIONAL INVESTMENT AGREEMENTS:
A COMMON AGENDA**

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**How does the International Chamber of Commerce (ICC)
contribute to capacity building? The way forward**

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We have heard today a great deal about the increasing number of international investment disputes. We have also learned that the disputes themselves are becoming increasingly complex on both a procedural and a substantive level. The question to be addressed now is what is the way forward and, in particular, what can an institution such as the ICC International Court of Arbitration contribute to this field. More specifically, how can the Court contribute to capacity building?

In answering this question, it is useful to begin with a few basic facts for those who may be unfamiliar with the International Court of Arbitration. The Court was created in 1923 as the arbitration body of the International Chamber of Commerce, a non-profit organization with its headquarters in Paris. Since its creation, the Court has administered more than 14,000 arbitration cases involving parties and arbitrators from some 180 different countries. In 2004, the Court received 561 new requests for arbitration and had 1,110 pending cases at the end of the year.

In relation to international investment agreements, it may be noted that 11.6% of the cases referred to the ICC in 2004 involved a State or parastatal entity. Although most of the cases involving State parties were what are referred to as 'contract arbitrations', ICC arbitration has also been provided for in several bilateral investment treaties (BITs) and the Court has received a limited number of BIT cases.

Although the Court is sometimes regarded as simply an administrative body handling ICC arbitration cases, it does much more than administer arbitrations. It strives to promote arbitration as the most effective means of resolving international disputes. One of the Court's most important functions is its educational role in the field of dispute settlement. Thanks both to the vast experience it has gained through its long history of administering cases and to its truly international character, the Court acts throughout the world in order to increase the knowledge and understanding that exists among the different players involved in international arbitration.

¹ This publication represents the personal views of the author and should not be interpreted as binding upon the ICC or the ICC International Court of Arbitration.

First, let me highlight some of the ways in which the Court currently participates in capacity building, and then consider the role we might play in the future with the other institutions represented here.

1) Training Programs in International Arbitration

Throughout the year, the ICC holds various training programs for lawyers, arbitrators and judges. Many of these training programs are carried out by the ICC Institute of World Business Law, a body established specifically for research and educational purposes. The programs organized by the Institute in 2005 will have involved approximately one thousand participants from more than seventy-five different countries all over the world.

The Institute's training programs cover various levels from basic introductory courses to more advanced workshops, often with mock arbitrations. These events take place not only in Paris, but also elsewhere. For example, recent locations have included Bahrain, Senegal and Algeria.

At each of the Institute's seminars, at least one person from a developing country is accepted without being requested to pay fees.

Other training programs are carried out by the International Court of Arbitration itself, often with the help of ICC National Committees around the world. For example, training events have recently taken place or are planned in Lebanon, Panama, Costa Rica, Brazil, Algeria and Thailand.

The Court has also been asked to provide training programs designed to increase awareness of arbitration amongst judges. Recent examples include programs for members of the judiciary from the OHADA countries, Syria, China and Argentina.

2) Cooperation with Governments

Governments that are considering revising their arbitration laws or wish to seek information on the workings of an arbitration center may approach the International Court of Arbitration for advice. Several recent examples include Moldavia, Kazakhstan, Azerbaijan and Mongolia. Also, discussions on arbitration legislation have been held with countries wishing to apply for membership of the European Union. The Court has cooperated with various Ministries of Foreign Affairs and national development programs such as the German Development Program, USAID and the Swiss Organization for Facilitating Investments.

The Court has also given advice when draft legislation would impede the development of international arbitration.

3) Cooperation with Other Organizations and Institutions

The International Court of Arbitration cooperates with a large number of organizations and institutions for the development of international dispute resolution. Such cooperation takes various forms which may include the sharing of information, organizing of training programs and seminars and advising on projects and initiatives. In addition to the cooperation that exists with the institutions organizing this symposium today, i.e. the OECD, UNCTAD and ICSID, the ICC has, for example, recently worked with UNCITRAL in reviewing modifications to the Model Law, with IDLO in providing training courses, with FIDIC in organizing conferences and with the Chartered Institute of Arbitrators, both in Europe and around the world.

Cooperation also takes place with bar associations, often in developing countries, which may set up arbitration commissions and frequently look to the International Court of Arbitration for advice. There has also been cooperation in more developed countries such as the United States, where the American Bar

Association has organized study visits and conferences in collaboration with the International Court of Arbitration. At an international level, the IBA also has sought input from the ICC on several of its projects.

The International Court of Arbitration also cooperates with other arbitration institutions, many of which are grouped together through the International Federation of Commercial Arbitration Institutions (IFCAI), which serves as a forum for sharing information among institutions and organizing seminars on topics of interest in international arbitration.

Arbitration groups in different parts of the world, such as the Association suisse de l'arbitrage, the Comité français de l'arbitrage, the Venezuelan Arbitration Committee, the Brazilian Arbitration Committee and the Swedish Arbitration Association, regularly invite the ICC to participate in their activities.

4) Educational Programs for Students

These programs are intended for law schools, business schools and bar schools in Paris and around the world. Throughout the year, an enormous number of student groups visit the International Court of Arbitration to learn more about dispute resolution. The ICC has started an International Commercial Mediation Competition for students, which is planned to be an annual event. This complements the Willem Vis Arbitration Moot in Vienna and the Montpellier Arbitration Moot of which the ICC is a sponsor.

In addition, the ICC cooperates with certain universities that have set up dispute resolution centres, such as Heidelberg University in Germany and Shantou University in China.

5) Internship Program

Probably the most important way in which the International Court of Arbitration trains students is through its ongoing internship program. Interns normally spend a period of two months with the Court, during which time they participate in the work of the teams administering ICC cases or conduct research. They also of course have the opportunity to attend the sessions of the Court.

Since 2000, 277 young lawyers from 65 countries have benefited from the Court's internship program. In 2004 alone, 51 interns from 30 different countries were received by the Court. The list of countries from which they come grows year by year. New countries in 2005 included Ghana, Laos, Lithuania, Panama and Paraguay.

The Court has recently created an alumni news group allowing information to be disseminated and exchanged among former interns.

6) Publications

The ICC has its own dispute resolution review entitled the *ICC International Court of Arbitration Bulletin*. In addition to the regular issues, there are special supplements on topical subjects, which have recently included the use of technology in dispute resolution and procedural issues in complex arbitrations. The Bulletin is published in English and French, and the ICC has allowed some of the articles it contains to be translated into different languages. Also, the Bulletin is sent to a number of other arbitration centers on the basis of various cooperation and exchange agreements.

The Court is striving to extend the range of languages in which ICC awards are published. While continuing to be published in French and English, awards are now increasingly appearing in other languages, such as Russian, German, Spanish, Portuguese and Italian.

Also, the ICC's cooperation with Unidroit has led to the publication of many ICC awards relating to the Unidroit Principles of International Commercial Contracts, with accompanying commentary.

The Court also contributes in other ways to the publishing of books on dispute resolution, not only through the ICC's own publishing arm, but also with other publishers. This sometimes includes the publication of the proceedings of noteworthy conferences.

7) ICC Discussion Forums

The ICC provides many forums through which discussions may take place which allow developments to be followed and appropriate evolutions to be encouraged. The broad geographic reach of the institution allows information to be exchanged on an international level. This is reflected in the very structure of the ICC, with national committees in some ninety different countries around the world, many of which have dispute resolution committees. The various ICC Commissions such as the ICC Commission on Arbitration, which has over 400 members, also allow for broad-reaching debates on various topics.

Other forums for discussion at the ICC include colloquia organized for arbitrators in general and, more specifically, for young arbitrators. Regional arbitration interest groups, which now exist in Latin America, Eastern Europe, Asia and hopefully soon in Arab countries, allow an exchange of points of view and often highlight problems that may be of specific interest to a particular region.

8) The Court and its Secretariat

Finally, the International Court of Arbitration and its Secretariat, by their very existence, help to further the development of international arbitration. At present, the Secretariat of the Court comprises sixty staff members including over thirty young lawyers, most of whom will continue to work in international arbitration when they move on, using the invaluable experience gained with the Court.

The members of the Court, currently numbering over 120, are practicing lawyers, academics and in-house counsel. Through their work at the Court, which they do on a voluntary basis, they gain insight and exchange information, which again helps to widen and increase knowledge and experience in the field of international arbitration.

Conclusion

In conclusion, these are just some examples of how the ICC works to increase knowledge in the world of international arbitration. But there is so much more that can and must be done.

International arbitration is clearly an area in which there is a need for the public and private sectors to work together. Due to the important number of cases that take place in the private commercial sector, experience has been gained which can be transferred to the public sector, especially as concerns investment arbitration. This is not to deny that there are of course significant differences between the two systems which must be taken into account. But treaty arbitration can learn a great deal from contract-based arbitration, and vice versa. An exchange between the two systems is essential for each of them to continue to develop and flourish.

Such exchange is also essential to the growth of international trade and to optimizing the efficiency and effectiveness with which the resulting disputes are resolved. The International Court of Arbitration looks forward to continuing its cooperation with the other institutions here today in promoting such exchange.