Pace Law Review

Volume 5
Issue 3 *Spring 1985*
International Commercial Arbitration Issue

Article 3

April 1985

International Chamber of Commerce Arbitration

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The Court of Arbitration of the International Chamber of Commerce (I.C.C.) was created in 1923. Since then, it has become the forum for some of the most important international commercial disputes. By 1984, the total number of cases filed with the I.C.C. Court of Arbitration had reached five thousand. The development of the I.C.C., however, has not been a constant one. Its activities have boomed during the last ten years. By July, 1976, 2978 requests for arbitration had been filed with the I.C.C. This means that more than forty percent of the cases were filed during the last ten years, while it had taken fifty years for the remaining sixty percent to be filed. For the period between 1962 and 1965, the average number of cases submitted to the Court of Arbitration was 64 cases per year. Between 1972 and 1975, the number grew to 153 cases per year. From 1981 to 1983, it was 268.

Statistics for 1983 illustrate the worldwide growth of I.C.C. arbitration.[1]

SUBJECT MATTER OF I.C.C. CASES

Sales of Goods	31.5%
Construction	25.3%
East-West Industrial Cooperation	10.2%
Licenses	10.0%
Agency Contracts	5.1%
Joint Ventures	1.7%
Financing	.9%
Miscellaneous	15.3%

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1. *See* Y. DERAINS & J. JARVIN, CHRONIQUE DES SENTENCES ARBITRALES 907 (1984).

GEOGRAPHICAL ORIGIN OF PARTIES

Western Europe	52.0%
U.S.A. and Canada	14.0%
Middle East	9.0%
Eastern Europe	8.0%
North Africa	5.0%
Asia	5.0%
Africa	3.0%
Latin America	3.0%
Oceania	1.0%

AMOUNTS IN DISPUTE (in U.S. dollars)

In 1983, the total amount in dispute in all pending cases was more than three billion U.S. dollars. The repartition was as follows:

Less than $20,000	10.4%
Between $20,000 and $50,000	20.0%
Between $50,000 and $1 million	30.1%
Between $1 million and $10 million	31.1%
More than $10 million	8.4%

These figures give a clear indication of the current importance of I.C.C. arbitration. This Article will underscore the features that characterize I.C.C. arbitration[2] and describe its practical functioning.[3]

I. The Main Features of I.C.C. Arbitration

There are three main criteria by which to classify arbitration facilities:

(1) What types of disputes can be submitted to the arbitration system?

(2) Is the arbitration system national or international?

(3) Is the proceeding ad hoc or institutional?

I.C.C. arbitration, if judged by these criteria, appears universal in terms of the types of disputes that can be submitted to it, and is clearly international. It is also institutional, although this

2. *See infra* Section I.

3. *See infra* Section II.

qualification requires further explanation.

A. *Universal Type of Arbitration*

A survey of the various existing arbitration facilities reveals the difference between specialized and universal systems of arbitration. Specialized systems extend their services only to certain trade sectors, such as maritime arbitration, or arbitration relating to cereals or to textiles. Among others, one might mention the Scandinavian Arbitration Commission for Leather and Hides, the European Union for Wholesale Trade in Potatoes, and the Gdynia Court of Arbitration for Shipping and Inland Navigation, as examples of facilities that provide specialized systems of arbitration. Universal systems, on the other hand, are prepared to handle *any* type of dispute, generally on the condition that the dispute occurs in a business context — a notion that is interpreted in a broad sense. This is the case, for example, with arbitration centres in the Council for Mutual Economic Assistance (CMEA) countries, with the American Arbitration Association, and with the London Court of Arbitration.

Article 1(1) of the Rules for the I.C.C. Court of Arbitration states that "[t]he function of the Court is to provide for the settlement by arbitration of business disputes of an international character . . . ."[4] From this, it clearly follows that any disputes likely to arise in international trade relations can be submitted to I.C.C. arbitration. In fact, the statistics on the cases thus far submitted to the I.C.C. demonstrate this.[5] The fact that the I.C.C. Court of Arbitration is prepared to deal with any kind of business dispute, however, does not make any dispute that falls in this category arbitrable under the law applicable to the arbitration agreement.

This arbitrability problem may be illustrated by the following example. Disputes arising out of an agency contract, as business disputes, may be submitted to I.C.C. arbitration. However, under some national laws, such as Italian law, these disputes cannot be arbitrated when the agent is a physical person because these disputes are assimilated in to labor disputes, which are not

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4. RULES FOR THE I.C.C. COURT OF ARBITRATION, PUB. No. 291, art. 1(1) (1980) [hereinafter cited as I.C.C. ARBITRATION RULES].

5. *See supra* text accompanying note 2.

arbitrable. Therefore, even though agency contracts fall under the definition provided by article 1(1) of the I.C.C. Arbitration Rules, an I.C.C. arbitrator may find himself with no jurisdiction when parties have decided to arbitrate an agency contract dispute if, under the law applicable to the arbitration agreement, such a dispute is not arbitrable. The universal character of I.C.C. arbitration demonstrates the scope of the mission that the I.C.C. has given to its arbitration body. It has no bearing on the arbitrability of disputes, which depends on the various national laws on arbitration.

B. *An International Type of Arbitration*

Determining whether an arbitration procedure or case is international involves problems of legal qualification that need not be entered into in this Article. But for the sake of classifying the existing arbitration facilities, this criterion makes it possible to distinguish among:

1. national arbitration centres: only the nationals of a certain country have recourse to them, generally in a specific branch of trade (for example, arbitration bodies set up by national trade associations);

2. arbitration centres of national origin set up in response to the foreign trade needs of a country (for example, arbitration centres in the CMEA countries);

3. bilateral arbitration systems (for example, the Iran-US Claims Tribunal);

4. regional systems (for example, the Inter-American Commercial Arbitration Commission); and

5. international systems set up in response to international trade needs in general, rather than those of one or several countries (for example, the I.C.C. Court of Arbitration).

The international nature of I.C.C. arbitration stems from the international nature of the I.C.C. itself. The I.C.C. has national committees in fifty-seven countries. The composition of the I.C.C. Court of Arbitration reflects this internationalism. By the end of 1984, it was composed of a French chairman, Mr. Michel Gaudet, five vice-chairmen (from India, Lebanon, Sweden, Switzerland, and the United States), a U.S. Secretary General, and members from Australia, Austria, Belgium, Canada, Colombia, Cyprus, Denmark, Egypt, Finland, France, Federal

Republic of Germany, Greece, India, Iceland, Ireland, Israel, Italy, Ivory Coast, Japan, Lebanon, Madagascar, Mexico, Morocco, Netherlands, Nigeria, Norway, Portugal, Spain, Sri Lanka, Sweden, Switzerland, Turkey, United Kingdom, United States, Venezuela, and Yugoslavia.

The Rules for the I.C.C. Court of Arbitration, which guide the proceedings submitted to the court, contain provisions to ensure that this general internationalism will be confirmed, in fact, in the way each dispute is handled. This assurance applies both to the arbitrator's nationality and to the place of arbitration.

The court does not itself settle disputes but rather initiates and supervises the activity of sole arbitrators or of chairmen of arbitral tribunals set up for each of the cases brought before the court. The court must choose arbitrators or chairmen from countries other than those of which the parties to the dispute are nationals. For instance, in a case between a Hungarian party and a French party, the Court of Arbitration decided that the chairman of the arbitral tribunal would be an Austrian citizen. In another case, between a French firm and an Indian enterprise, the Court of Arbitration appointed a Yugoslav as chairman.

The same policy applies when the place of the arbitral proceedings is chosen. It is important to recognize that although the headquarters of both the I.C.C. and its Court of Arbitration are located in Paris, the court organizes and supervises arbitral proceedings that can take place anywhere in the world. Whenever the parties have not already agreed on the place of the proceedings, the court decides on a third country, selected to maintain a geographical balance between the respective positions of the parties. In 1983, I.C.C. arbitration proceedings took place in eighty-one different countries: 85% in Western Europe, 7.5% in North America, and the remaining 7.5% in other parts of the world. It is worth noting that the parties chose the place of arbitration themselves in 67% of the cases.

Because of this resolutely international approach to settling disputes and the international structure of the Court of Arbitration, I.C.C. arbitration is quite distinct from the national, bilateral, or regional arbitral institutions that have grown up in various parts of the world. It is comparable to arbitration under the aegis of the International Centre for the Settlement of Investment Disputes (ICSID), which was set up by the Washington

Convention of 1965[6] but has a different purpose.

C. *Ad Hoc Procedure Supervised by an Institution*

"Ad hoc" arbitration means proceedings that the parties themselves define in agreement with the arbitrators. The points to be worked out in this case concern primarily the designation of the arbitrators, the choice of the place of arbitration, and the various rules that are to be followed in the course of the arbitration.

In institutional arbitration, on the contrary, the parties decide to have recourse to the permanent facilities of an established arbitration centre and to submit to that centre's rules. Generally, such a centre chooses the arbitrators from a pre-established list of names.

There is no doubt that I.C.C. arbitration must be characterized as institutional arbitration. The above remarks on the nationality of the arbitrators and on the place of arbitration, however, show that the initiation of proceedings in each case calls for individual solutions. Moreover, the intervention of the Court of Arbitration concerning the appointment of arbitrators and the place of arbitration, is required only in those cases in which the parties have not found a solution to these problems. For example, with regard to the appointment of arbitrators, article 2(1) of the I.C.C. Arbitration Rules stipulates that "[i]nsofar as the parties shall not have provided otherwise, [the court] appoints, or confirms the appointments of, arbitrators in accordance with the provisions of this Article."[7] This has the advantage of incorporating into institutional arbitration the flexibility that the parties sometimes count on when they call on ad hoc arbitration. But under the I.C.C. system, the parties are not left to their own devices, as they may be in ad hoc proceedings. Here, the Court of Arbitration steps in, not only to shape the arbitral proceedings if the parties have made no specific stipulation, but also to supervise the application of the rules by the arbitrator(s) appointed in each case. This supervision certainly helps to account

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6. Convention on the Settlement of Investment Disputes between States and Nationals of Other States, Mar. 18, 1965, 17 U.S.T. 1270, T.I.A.S. No. 6090, 575 U.N.T.S. 160.

7. I.C.C. ARBITRATION RULES, *supra* note 4, art. 2(1).

for the fact that I.C.C. arbitration awards have seldom been challenged; on average, about ninety percent of them have been spontaneously complied with by the losing party.

II. How I.C.C. Arbitration Works

Two phases may be distinguished in the practical application of the Rules for the I.C.C. Court of Arbitration: (1) the "pre-arbitral" phase and (2) the "arbitral" phase.

A. *The Pre-Arbitral Phase*

The pre-arbitral phase starts with the filing of an arbitration request with the Secretariat of the Court of Arbitration and ends when the initial file is handed over by the Secretariat to the arbitrator(s). The request for arbitration must contain the following information:

1. names in full, description and addresses of the parties;
2. a statement of the claimant's case;
3. the relevant agreements, and in particular the agreement to arbitrate, and such documentation or information as will serve to establish the circumstances of the case clearly;
4. all relevant particulars concerning the number of arbitrators and their choice.[8]

The date when the request is received by the Secretariat is deemed to be the date of commencement of the arbitral proceedings, according to article 3(1) of the rules. This point is particularly important for the application of either legal or contractual provisions on time limitations.

The defendant must reply to the request for arbitration within thirty days. He may also, within the same time limit, file a counterclaim. The time limit may, however, be extended by the Secretariat if the defendant has made comments regarding the number of arbitrators and their choice. The rationale of such a rule is that, while the defendant is preparing his reply, the Court of Arbitration will nevertheless be able to start organizing the arbitration.

If the defendant tries to obstruct the arbitration proceedings, the Court of Arbitration may use "anti-obstructional" pro-

8. *Id.* art. 3(2).

visions included in its rules. In fact, the "anti-obstructional" provisions are one of the major advantages that distinguishes institutional arbitration from ad hoc arbitration in which the parties organize without any institutionalized possibility of overcoming the various difficulties inherent in arbitration. The three most common difficulties are:

1. the challenge to the jurisdiction of the Court of Arbitration;

2. the refusal to take part in the formation of the arbitral tribunal; and

3. the plain default of the defendant.

The plea that the Court of Arbitration lacks jurisdiction does not prevent the case from being brought before the arbitrators if the court finds, prima facie, that an agreement to arbitrate referring to the I.C.C. exists. The court, however, does not finally decide; it is up to the arbitrator to allow this plea. In the spirit of the Geneva Convention on International Commercial Arbitration of 1961,[9] which sanctioned it, the arbitrator's right to rule on his own jurisdiction (*Kompetenz-Kompetenz*) was recognized by article 8(3) of the I.C.C. Arbitration Rules, leaving State courts only an a posteriori right of control. Article 8(3) states:

> Should one of the parties raise one or more pleas concerning the existence or validity of the agreement to arbitrate, and should the Court be satisfied of the prima facie existence of such an agreement, the Court may, without prejudice to the admissibility or merits of the plea or pleas, decide that the arbitration shall proceed. In such a case any decision as to the arbitrator's jurisdiction shall be taken by the arbitrator himself.[10]

With regard to the constitution of the arbitral tribunal, the I.C.C. system, as has already been pointed out, offers simultaneously the advantages of both ad hoc and institutional arbitration. The parties are able to enjoy virtually the same unlimited freedom as in ad hoc arbitration, if they wish to. No list of arbitrators is imposed on them; no restriction of any sort is made. They can agree on the choice of a sole arbitrator who is suitable

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9. European Convention on International Commercial Arbitration, Apr. 21, 1961, art. 5(3), 484 U.N.T.S. 364.

10. I.C.C. ARBITRATION RULES, *supra* note 4, art. 8(3).

to them, regardless of his training or his professional activity or his nationality. Because on the international level such an agreement is either difficult to reach or, considering the importance of what is at stake, undesirable, there is nothing to prevent the parties from appointing three arbitrators, on whatever terms they wish to arrange. For instance, the parties can stipulate that each of them will choose one arbitrator and that the two arbitrators will then choose their chairman. But, and here is where we find one sign of institutional arbitration, they are allowed to exercise this freedom only within a reasonable period of time. Once the period fixed by the rules has expired, or after its justified extension in certain cases, the Court of Arbitration acts *for* the parties in this connection. The Court of Arbitration, however, does not enjoy the same freedom of choice. Above all, it must ensure the international nature of the I.C.C. arbitration. Therefore, both the sole arbitrator and the chairman of an arbitral tribunal must be neutral compared with the nationality of the parties.

Toward this goal, the court selects a National Committee capable of submitting a suitable proposal to the court. This selection calls for a good deal of subtlety and tact. The rules, therefore, expressly require that the arbitrators shall be chosen not only with regard to their nationality but also with regard to their "residence and other relationships with the countries of which the parties or the other arbitrators are nationals."[11] Along the same lines, when an arbitrator must be named on behalf of a defaulting party, the Court of Arbitration asks for a proposal from the National Committee of the country of which the defaulting party is a national; it is only if this approach proves fruitless that the court is "at liberty to choose any person whom it regards as suitable."[12]

If the defendant refuses to participate in the arbitration (provided the Court of Arbitration finds prima facie that there is an arbitration), the matter will be referred to an arbitrator, who will conduct the procedure as though the defaulting party were present. The claimant needs only to pay the defaulting or recalcitrant party's share of the full deposit intended to guarantee

11. *Id.* art. 2(1).
12. *Id.* art. 2(6).

the payment of the fees owing to the arbitrator(s) and the administrative charge of the I.C.C.

B. *The Arbitral Phase*

The first task of the arbitrators is to draw up their "terms of reference." This document, expressly referred to by article 13 of the I.C.C. Arbitration Rules, is typical of I.C.C. arbitration. It must include the following particulars:

1. the full names and description of the parties;
2. the addresses of the parties to which notifications or communications arising in the course of the arbitration may validly be made;
3. a summary of the parties' respective claims;
4. a definition of the issues to be determined;
5. the arbitrator's full name, description and address;
6. the place of arbitration;
7. the particulars of the applicable procedural rules and, if such is the case, reference to the power conferred upon the arbitrator to act as *amiable compositeur*; and
8. such other particulars as may be required to make the arbitral award enforceable in law, or may be regarded as helpful by the Court of Arbitration or the arbitrator.[13]

The terms of reference must be signed by the parties. Should one of them refuse to sign the document, it must be approved by the Court of Arbitration.

The usefulness of drawing up such a document is regularly questioned. It is often regarded as a waste of time that delays the actual discussion of the case. The terms of reference, however, have the great advantage of clearly defining the scope of the arbitrator's mission at the outset of his intervention and avoiding any ambiguity as to the position of each party.

Defining the arbitrator's mission is a further guarantee that the arbitrator will not decide *ultra petita*, which is very important with respect to the finality of the award. Defining each party's precise position is often an opportunity for them to find an amicable settlement. About thirty percent of I.C.C. cases are amicably settled. Generally, settlement occurs when the terms of

13. *Id.* art. 13(1).

reference are being prepared because a dispassionate description of the dispute by the arbitrator may lead a party to the conclusion that the possibility of an agreement is not as remote as he would have thought.

The I.C.C. system has enhanced its capacity as a genuine international jurisdiction of private law through appropriate provisions concerning the law applicable to the arbitral procedure in its rules. The application of the law of the place of arbitration has been abandoned. The I.C.C. Arbitration Rules make a bold move toward an authentic "international" award by recognizing an absolute autonomy. Failing a choice by the parties of a national procedural law, the rules governing the proceedings (in order to fill in the gaps left by the I.C.C. Arbitration Rules) will be determined by the arbitrator; but to do so, the arbitrator need not necessarily refer to a municipal procedural law. This flexibility allows the arbitrators to organize a tailor-made procedure, particularly if the parties belong to procedural systems with quite different traditions (for example, civil law and common law).

As for determining the law applicable to the merits of the case, it is not surprising that the I.C.C. arbitration system should follow the international methods to which the Geneva Convention of 1961 finally opened the way.[14] The I.C.C. Arbitration Rules adopt the following method for determining the applicable law:

> The parties shall be free to determine the law to be applied by the arbitrator to the merits of the dispute. In the absence of any indication by the parties as to the applicable law, the arbitrator shall apply the law designated as the proper law by the rule of conflict which he deems appropriate.[15]
>
> In all cases the arbitrator shall take account of the provisions of the contract and the relevant trade usages.[16]

This solution is very similar to that adopted by article 33(1) of the UNCITRAL Arbitration Rules: "The arbitral tribunal shall apply the law designated by the parties as applicable to the sub-

14. *See* European Convention on International Commercial Arbitration, *supra* note 9, art. 7.

15. I.C.C. ARBITRATION RULES, *supra* note 4, art. 13(3).

16. *Id.* art. 13(5).

stance of the dispute. Failing such designation by the parties, the arbitral tribunal shall apply the law determined by the conflict of laws rules which it considers applicable."[17]

As a result of such rules, the arbitrators have the most freedom when deciding on the law applicable to the substance of the dispute, if it has not been chosen by the parties. I.C.C. arbitrators exercise this freedom by following methods of determining the law applicable to the substance of the dispute that are quite different from those followed by national courts.[18]

In exercising his discretion, the I.C.C. arbitrator can decide to apply the private international law of a specific country. In most cases, this will be the law of the place of arbitration. Indeed, cases in which the arbitrator places himself within the unique framework of another State's private international law system (either the private international law of the place where the contract was formed, that of the jurisdiction ousted by the arbitration agreement, or that chosen by the parties) are extremely rare, if not non-existent.

Moreover, recourse to another State's system is not very representative of the dominant trends in arbitral jurisprudence. These trends can be divided into three categories: (1) cumulative application of conflict of laws systems concerned with the dispute; (2) recourse to general principles of private international law; and (3) "voie directe," which avoids any reference to a conflict of laws system.

1. *Cumulative Application of Conflict of Laws Systems Concerned with the Dispute*

This first method can be described succinctly: the arbitrator examines all conflict of laws rules adopted by the different national legal systems concerned with the dispute submitted to him. Upon finding that these rules converge toward a single internal law, he declares that law to be applicable. The cumulative

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17. UNCITRAL Arbitration Rules, art. 33(1), UNCITRAL, Report of the Ninth Session, [1976] 7 Y.B. COMM'N INT'L TRADE L. 22, U.N. Doc. A/CN.9/SER.A/1976, *reprinted in* 2 Y.B. COM. ARB. 161 (ICCA 1977).

18. *See* Derains, *Possible Conflict of Laws Rules and the Rules Applicable to the Substance of the Dispute*, in ICCA CONGRESS, SERIES No. 2, UNCITRAL'S PROJECT FOR MODEL LAW ON INTERNATIONAL COMMERCIAL ARBITRATION 169 (1984).

application of conflict systems concerned with the dispute has two major advantages. First, from a theoretical point of view, it permits definition of a law whose applicability is internationally recognized, even if this recognition is geographically limited.

Second, from a practical point of view, it favours the acceptance by both parties of a decision that could not then be attacked as arbitrary. An award in an I.C.C. case illustrates both of these concerns:

> Even if it is generally admitted that judges decide on the applicable law according to conflict of laws rules of the State for which they render justice, the arbitrators cannot have recourse to such rules to the extent that they do not derive their power from any State. But if they can show on the question in issue that the conflict rules of the different States with which the matter submitted to them has any ties are similar or lead to a same result, they have the power to apply these common conflict rules since they can be sure of satisfying the implicit or supposed intention of the parties from which they derive their power.[19]

2. *Recourse to General Principles of Private International Law*

Using this method, the arbitrator refers to a conflict rule that receives a large international consensus . I will give two examples, one relating to a contractual dispute, the other to a claim in torts. In an award rendered in 1971, the arbitrator noted:

> There are few principles more universally admitted in private international law than that referred to by the standard terms of the "proper law of contract," according to which the law governing the contract is that which has been chosen by the parties, whether expressly or (with certain differences or variations according to the various systems) tacitly.[20]

In a case that was the subject of an award rendered in 1978, the arbitrator determined the legal system applicable to tortious liability as follows:

> There exists a generally accepted choice of rules of law according

19. I.C.C. Case No. 1176.
20. I.C.C. Case No. 1512.

> to which the applicable law to a tort is that of the country where the presumed tort took place, the lex fori deliciti. In general, when the place of the prejudicial act or omission and that of the damages are located in the same country, the law of that country is applicable; when the place of the act or omission and that of the damages are located in different countries, the applicable law is that of the country where the damages have been incurred.[21]

3. Voie directe

According to this method, the arbitrator is not concerned with the determination of the conflict of laws system that he should follow to determine the applicable rule of law. He, himself, declares the conflict rule that he intends to follow. Thus, in a case that was the subject of an award in 1983, the arbitrator applied the law of the country of the principal place of performance of the contract, without attempting to justify the choice of this conflict rule: "The tribunal observes that most of the contract should have been executed in Korea and that for this reason Korean private law must be chosen as the law governing the contract."[22]

Of course, some I.C.C. arbitrations have recourse to none of the three methods quickly reviewed above. I have, in fact, come across an award stating that "the applicable law is that which best suits the characteristics of the contract." But this is nothing more than a marginal, isolated attitude. There are some other approaches in which this solution is raised, but it does not seem to be useful to review them given the limited scope of this Article.

The arbitral award can be made by a majority decision, or failing a majority, by the chairman alone. The award must be made in writing and must include, at least in the form of a draft submitted to the Court of Arbitration, a coherent and complete statement of the reasons for the award. The I.C.C. system, being one of "supervised" arbitration, necessarily includes a certain degree of control by the Court of Arbitration over the award itself. However, the court can impose only modifications as to

21. I.C.C. Case No. 3043.
22. I.C.C. Case No. 4132.

form; it can draw the attention of arbitrators to matters of substance, but the arbitrators remain free to make their own final decisions on those points. The intervention of the court at this stage is aimed at helping the arbitrators and at making sure that the award will be enforceable at law. The powers given to the court regarding the form of the award are justified primarily by the fact that a sole arbitrator or a chairman of an arbitral tribunal, who is "neutral," may not necessarily know the special formal requisites of the place where the award has to be enforced. It is therefore the task of the Court of Arbitration to provide him with this assistance, and the international composition of the court gives it the means to do so. The nonbinding comments of the court on matters of substance may usefully draw the attention of the arbitrators to points that they might have overlooked. For instance, an arbitrator may in his draft award order a party to pay interest although the other party had forgotten to claim it. In such a case, the court's intervention avoids an award being issued *ultra petita*, and thus running the risk of being cancelled by a State court.

III. Conclusion

The major characteristic of I.C.C. arbitration, duly reflected by the practical application of the I.C.C. Arbitration Rules, is a combination of institutional and ad hoc arbitration. It may be a paradox, but to state that all arbitrations conducted under the I.C.C. rules are similar would be as inaccurate as to state that they are all different. It is true that all I.C.C. arbitrations are governed by the same rules and supervised by the same Court of Arbitration to which the terms of reference must be communicated. The court scrutinizes all awards before notifying the parties. However, an I.C.C. arbitration in London that follows the common law procedure, with discovery of documents and examination and cross-examination of witnesses by counsel, has very little in common with an I.C.C. arbitration in Vienna, that follows civil law procedure, with no discovery of documents and possibly no witnesses at all.

Such diversity within a uniform framework explains why parties from countries with very different legal traditions use I.C.C. arbitration.