THE INTERNATIONAL CHAMBER OF COMMERCE
AND THE DEVELOPMENT OF INTERNATIONAL ARBITRATION

By ALGOT BAGGE

The world seems more divided and the nations farther removed from one another than ever before. And yet they cannot, any more than the individuals, exist without each other. This may be observed most strikingly in the realm of commerce. The men of business are those who most acutely feel the isolationist tendencies. Every move in the direction of co-operation, therefore, must appeal to them, not only in the field of legislation but also in the domain of international legal procedure. For the last twenty years the International Chamber of Commerce has placed its services at the disposal of those who wish their commercial disputes of an international nature settled by its arbitration tribunal. The importance of an institution of this kind to international co-operation should not be underestimated. It is not unnatural that a party being involved in a dispute with another party domiciled in another country will sometimes hesitate to submit his case to the public courts or arbitration tribunals of his opponent's own country. For it may frequently happen in such cases, despite all rules of private international law, that the award or judgment is based on the law and custom of the opponent's country, a circumstance which may never have entered into the considerations of the party when he made the contract. Particularly with regard to arbitration tribunals it should be borne in mind that unless the arbitrators are trained in the practice of law, their difficulty in mastering foreign law makes them all the more unsuited to safeguard a foreign party's right to have the law and custom of his own country taken into consideration — a right which the foreign party enjoys under the principles of private international law, provided that the contract in the actual circumstances must be regarded as associated with the law of his own country rather than that of his opponent's. If
the arbitrators fail to give consideration to law or custom but allow
a fairly large scope for their subjective opinions it is not incon-
ceivable that they may be more apt to appreciate their fellow
countryman’s way of thinking and acting than to understand his
foreign opponent’s motives and assumptions, and that consequently
they may arrive at a conclusion which is not quite fair on the
latter.

These drawbacks may in arbitration cases be more easily avoided
if the national element is eliminated as far as possible. An interna-
tional arbitration tribunal, like that of the International Chamber
of Commerce, which is composed of representatives of different
nations and selects arbitrators who are not fellow countrymen of
the parties, and which, moreover, in each individual case exercises
certain preparatory functions and to some extent even a control,
should appear to the plaintiff in an international dispute as the best
means, second only to the jurisdiction of his own country’s law
courts or arbitrators, of safeguarding his right.

It is, therefore, astonishing that the Arbitration Tribunal of the
International Chamber of Commerce, being at present the only
existing real international arbitration tribunal in commercial cases, is
not used any more than it is. One of the reasons is undoubtedly that
the majority of the standard forms of contracts which the interna-
tional commercial associations have drawn up for their members do
not as a rule contain a clause referring disputes to the tribunal of the
International Chamber of Commerce. Generally they date back to
an earlier period before this particular tribunal came into existence,
and they are frequently the result of endeavours to have arbitra-
tion proceedings referred to one of the greater countries, the con-
sequence being that the arbitrators are drawn from that country
and that the law of that country is applied to the case. For a
comparatively new institution like the Arbitration Tribunal of the
International Chamber of Commerce it is no easy task to compete
with rules based on an established tradition and backed by the
evident interests of business circles in the major countries.

But outside these associations there is undoubtedly a large and
increasing number of business men who insert arbitration clauses
in their contracts without being bound by standard forms. In this
domain an international arbitration tribunal, international rules of
arbitration procedure and a common international code of commerce
might have an important function.

The international tribunal is already in existence — all it
requires is to be better known and to be made more popular.