

# **The Move to Stockholm of the Court of Arbitration of the International Chamber of Commerce (ICC) During the Second World War**

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## 1 Introduction<sup>1</sup>

The International Chamber of Commerce was founded in Paris on 27 June 1920. This event followed a previous conference that had taken place in Atlantic City in 1919, where, in a world torn apart by the First World War, the United States Chamber of Commerce had outlined the future development of international trade and commerce and what we today call the globalisation of the economy.<sup>2</sup>

According to its 1920 statutes, the mission of the ICC was (1) to facilitate exchanges between nations, (2) to ensure coordination in all international questions relating to commerce and industry, (3) to contribute to world peace by ensuring cordial relations between nations and citizens of different states and (4) to foster cooperation between businessmen and organisations that pursued the development of commerce and industry.<sup>3</sup> Today we know that the founders' bold objective to "contribute to world peace" suffered a serious setback during the Second World War. The ICC is now present in some 130 countries around the globe through its National Committees. ICC's members are companies and individuals in countries with a market economy. ICC's headquarters are still located in Paris.

From its founding, the International Chamber of Commerce considered that one of its main priorities was the establishment of a centre of international commercial arbitration.<sup>4</sup> On 19 January 1923, the "Court of commercial arbitration" was set up in Paris in the presence of the secretary general of the League of Nations. The Court's present name is the "International Court of Arbitration of the International Chamber of Commerce". The Court does not itself resolve disputes, it administers the resolution of disputes by arbitral tribunals, appoints arbitrators, scrutinizes and approves draft awards rendered by the arbitral tribunals, fixes the arbitral tribunals' fees and, in general, supervises the arbitral procedures.<sup>5</sup>

International arbitration can be organised in various forms, known as either *ad hoc* or institutional, leaving more or less freedom to the parties and the arbitrators to elaborate the procedure. The ICC envisaged an institutional form

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1 This article is based upon an article the author wrote in French for *Liber Amicorum en l'honneur de Serge Lazareff*, Editions A. Pedone, 13 rue Soufflot, 75005 Paris, 2011.

2 Michel Aurillac, *La Cour internationale d'arbitrage de la CCI régulatrice de la mondialisation*, in *Liber amicorum in honour of Robert Briner*, ICC publication 693, 2005, p. 42.

3 "Faciliter les relations d'échanges entre nations, d'assurer la coordination des efforts dans toutes les questions internationales touchant le commerce et l'industrie, de contribuer au maintien de la paix en assurant des relations cordiales entre les nations et les citoyens des différents Etats et en provoquant la coopération des hommes d'affaires et des organisations qui se consacrent au développement du commerce et d'industrie".

4 Dr Frédéric Eisemann, former Secretary General of the ICC Court of Arbitration, *The Court of Arbitration: Outline of its changes from inception to the present day*, in *60 Years On, a look at the future*, ICC Court of Arbitration 60th anniversary, ICC publication 412, May 1984, p. 391.

5 ICC Arbitration Rules, in force from 2012, article 1.2.

of arbitration from the very beginning, supplementing the procedural rules of arbitration with various permanent features and well-defined roles allotted to the people concerned.<sup>6</sup> It was in order to achieve this aim that the body called the "Court of arbitration" was set up, provided with a permanent secretariat and supported by the cooperation of the National Committees of the ICC which form the basis of the ICC.<sup>7</sup>

ICC arbitration developed slowly and modestly, like arbitration in general at the time. Between 1923 and 1930, it received close to one hundred requests for arbitration.<sup>8</sup> The 1930s was a period of consolidation for ICC arbitration. During this decade, the ICC's influence became visible through the development of a draft uniform law for arbitration promoted by the Rome institute of the League of Nations for the uniformisation of private law. However, at the ICC congress in Berlin in 1937, the British, American and Australian national committees of the ICC opposed its adoption.<sup>9</sup>

At the end of the 1930s came the big European economic and military crisis. In 1936, Nazi Germany occupied the demilitarized Rhineland and assisted the anti-government rebels during the civil war in Spain. On 12 March 1938 Germany annexed Austria. On 1 September 1939, the German army invaded Poland and on 3 September France declared war on Germany. On 30 November the Soviet Union attacked Finland where, contrary to what was expected, it encountered fierce and efficient military opposition. In March 1940, however, Finland had to accept the Soviet occupation conditions. On 9 April 1940, Germany invaded Denmark and conquered most of the Norway coast. On 10 May 1940, the German army penetrated into Belgium and the Netherlands and on 10 June 1940 Italy, under Mussolini, entered into the war. German troops marched into Paris on 14 June 1940; Paris was declared an open city.

The war became a world war with the German attack on the Soviet Union in June 1941 and the Japanese attack on the United States of America at Pearl Harbor in December 1941. In the meantime, the United Kingdom had also been drawn into the war.

One may wonder, against the background of this upheaval of world order, whether the ICC Court of Arbitration, and the activity of the International Chamber of Commerce in general, could continue to function? Could the Court of Arbitration, which moved from occupied Paris to neutral Stockholm during

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6 Dr Frédéric Eisemann, *op. cit.*, p. 392.

7 In countries with a market economy, companies and individuals constitute National Committees of the ICC: these committees represent the membership of the ICC on a national level. Each national committee may appoint a member to the ICC Court of Arbitration.

8 Michel Aurillac, *op.cit* p. 44. Thus, 100 cases in a seven-year period. By comparison, today the Court receives around 800 cases a year.

9 Dr Dr Ottoarndt Glossner, *The influence of the International Chamber of Commerce upon modern arbitration*, in 60 Years On: A look at the future, ICC Court of Arbitration 60th anniversary, ICC publication 412, May 1984, p. 400.

World War Two, continue its activity, would parties submit commercial cases to arbitration? In other words, did the ICC Court of Arbitration have a role to play during the Second World War?

To all these questions it is now possible to provide answers thanks to documents I found in the Royal Library in Stockholm where the archives of the Swedish National Committee of the ICC are stored.<sup>10</sup>

## **2 The 10 November 1939 Session in Amsterdam and the Preparations to Move the ICC Court of Arbitration to Stockholm**

On 6 November 1939, the ICC Court had recommended that its arbitration function in Sweden, a neutral country, “for disputes between neutral parties and German parties”.

Shortly thereafter, on 10 November 1939, the ICC council which met in Amsterdam, approved this initiative while waiting for the reaction of Germany which had reserved its decision. Finally, on 29 November 1939, the German National Committee of the ICC gave its approval making the ICC council’s decision final.<sup>11</sup>

It is interesting to observe the use of the term “neutral” in Pierre Vasseur’s correspondence. On the one hand it is used to designate Sweden, a country that had declared itself neutral in 1834 on the initiative of the former French field-marshal Jean-Baptiste Bernadotte who had become king of Sweden under the name Karl XIV Johan.<sup>12</sup> On the other hand Mr Vasseur used the term “neutral” to designate all countries that were not at war with Germany.

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10 Kungliga biblioteket, located at Humlegården, Stockholm.

11 Letter dated 9 January 1940 from Pierre Vasseur, secretary general of the ICC, to W.G. Stiernstedt, secretary general of the Swedish National Committee of the ICC.

12 Field-marshal Bernadotte, prince of Ponte-Corvo, was admired by a part of the Swedish nobility, in particular by the young Swedish officers who in 1807 had found him to be a chivalrous enemy in Swedish Pomerania. Bernadotte was elected heir of Sweden in 1810 against Napoleon’s will. The Swedes hoped with the help of Bernadotte to reconquer Finland from Russia (Finland had been part of the Swedish realm since medieval times) but Bernadotte, estimating Sweden’s resources insufficient for a new war against Russia and realizing the weakness of the Napoleonic empire, made an alliance with Russia and Great Britain and accepted the loss of Finland. Subsequently, in 1834 when Sweden, his new country of adoption in union with Norway since 1814, was menaced by a crisis, Bernadotte declared in a memorandum to the Russian and British governments, the neutral status of Sweden. See further Stig Strömholm in “Une amitié millénaire, les relations entre la France et la Suède à travers les âges », Beauchesne Editeur, Paris, 1993, p IX and Krister Wahlbäck, *The Roots of Swedish Neutrality*, Svenska Institutet, Uppsala, pp 8 and 13.

### 3 The Setting up of the Court, the Appointment and Composition of its Members

As soon as the decision had been made in November 1939 to establish the ICC Court in Stockholm where it would handle certain of its cases, the first thing to do was to appoint court members.

In early 1940, an exchange of correspondence in this regard took place between Paris and Stockholm. On 9 January 1940, Pierre Vasseur, the ICC's secretary general, announced in a letter to Mr Stiernstedt, the secretary general of the Swedish National Committee, that he would invite the president of the ICC to nominate as Court members persons residing in Stockholm. These members would, when the need arose, replace those titular members of the Court in Paris who could not come to Stockholm to be present at the Court's sessions.

A first reaction, negative, was dispatched on 15 January 1940 by the 'administrative commissioner' of the United Kingdom, Mr Owen Jones, who wrote to Mr Vasseur as follows:

*"Dear Sir,*

*I thank you for your letter of January 9th. I do not think that there would be the same difficulties in nominating a British member of the Court which is to sit at Stockholm, but I have come to the conclusion already that this step will be quite unnecessary in view of the fact that no British cases will be submitted to that Court.*

*Yours faithfully*

*Owen Jones"*

As for Swedish concerns, Sigfrid Edström<sup>13</sup>, the president of the Swedish National Committee of the ICC, asked himself whether it was pertinent to name members for the Stockholm Court from all the countries that had already nominated regular members to the Court in Paris. He thought it would be difficult to find representatives in Stockholm from all these countries, notably India, Indochina, Greece and Japan.

For his part, the secretary general of the Court (in Paris) noted that it was not opportune to name French, English or Polish members to the Court in Stockholm for political reasons. In addition, since 6 members were enough to form a quorum, it would not be required to appoint stand-in members from all the ICC National Committees. Taking into consideration the interest shown by various countries for ICC arbitration, he proposed that stand-in members be appointed from the following countries: Belgium, Denmark, Finland, Germany, Italy, Luxembourg, the Netherlands, Norway, Spain, Sweden, Switzerland, the United States and Yugoslavia. Further, the appointment of justice Algot Bagge,

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13 Chairman of the board and CEO of the Swedish group ASEA. Today, after ASEA's merger with the Swiss group Brown Boveri, the merged entity is called the ABB group.

the president of the Swedish Supreme Court, as president of the ICC Court in Stockholm, would be the best choice, considering “*la haute compétence de M Bagge et de l'autorité universelle dont il jouit en matière d'arbitrage international*”.

Some national committees had difficulties finding, among their compatriotes in Sweden, persons of note likely to be nominated members of the ICC Court in Stockholm. For instance, the Swiss legation wrote in a letter dated 21 February 1940 that it nominated as Court member Mr Adolf Elsässer, a Swiss national naturalized Swede, who represented La Société pour l'Industrie Chimique à Bâle and lived in Norrköping, some 150 kilometres south of Stockholm:

*“Un rapide examen des rares personnes de nationalité suisse pouvant entrer en ligne de compte pour faire partie de la Cour d'Arbitrage de la CCI m'a, à mon regret, conduit à la conclusion qu'il me serait difficile de vous soumettre une proposition pleinement satisfaisante à tous égards si ce choix devait être réellement limité au cercle extrêmement restreint de mes actuels compatriotes.”*

The following remark by the Swiss legation in Stockholm, casts an interesting light on Swedish attitudes to foreigners at this time:

*“Il ne faut pas oublier, en effet, que l'étranger qui réussit particulièrement en Suède et peut de ce fait y prétendre à une position indépendante se trouve généralement amené à acquérir la nationalité suédoise en renonçant à son indigénat d'origine.”*

For this reason Luxemburg also nominated a naturalized Swedish Luxemburger.

The secretary of the Dutch National Committee of the ICC nominated as their Court member Mr A.M. de Jong, a representative of the company Lips, Dordrecht, who had lived in Stockholm for many years. They added that, should it turn out that Mr de Jong did not possess all the qualities required for a Court member, notably as regards objectivity, the Dutch National Committee would not object to the appointment of a member of a different nationality, since the Dutch committee found it more important to find a capable Court member than being focused only on nationality:

*“Herr A. M. de Jong soll ein sehr energischer und zuverlässiger Geschäftsmann sein, der sehr viele gute Kapazitäten besitzt und der auch in kommerzieller Hinsicht sehr gut beschlagen ist.*

*Weil es, unserer Ansicht nach, mehr auf die Fähigkeit als auf die Nationalität der zu ernennenden Mitglieder ankommt, würden wir auch völlig damit einverstanden sein, wenn Sie es gegebenenfalls bevorzugen würden, eine zu dieser Arbeit ausgesprochen fähige Persönlichkeit anderer Nationalität zu ernennen.”*

The Royal Yugoslav legation in Stockholm answered in a letter of 26 February 1940 that it could not nominate a Court member since it had not found any Yugoslav citizen residing in Sweden.

La Regia Legazione d'Italia in Svezia proposed as Court member Dr Gino del Neri, "*who was in Stockholm as representative for the Fascist Institute of Foreign Trade*".

The Royal Hungarian legation designated Mr Georges de Pogány, the official delegate of the Royal Hungarian Office for Foreign Trade in Stockholm.

#### 4 The Secretariat

Another concern for the Swedish National Committee in establishing the ICC Court in Stockholm was the organisation of the Court's work. For instance, should the Court's secretariat in Paris continue to prepare the files?

In his letter to Mr Vasseur dated 30 January 1940, Mr Edström demanded that all files over which the ICC Court in Stockholm had jurisdiction be prepared in Stockholm, not in Paris. From an administrative point of view, rather than from a legal point of view, it would be more efficient, he thought, at least in the beginning, to have someone in Stockholm who knew perfectly well the administration of the files and the Court's working methods. It was finally decided that, on condition that the visa problem be resolved, a Dr Marx would travel from Paris to Stockholm and there instruct the new secretary general of the ICC Court in Stockholm, "*who was a young lawyer mastering at least the German language*". This was a reference to a young man named Sture Petré, who subsequently became the president of the Svea Court of Appeal and, ultimately, a justice at the International Court of Justice at the Hague.<sup>14</sup>

However, owing to a number of obstacles, Dr Marx could not make the trip to Stockholm. The Swedish Committee then proposed that a Mr Boissier replace him. A letter from president Edström dated 27 February 1940 sheds some light on the modalities and the time it took to travel in Europe in this period:

*"If Mr Boissier could come it would render us big service. The journey is not that difficult. From Brussels he could take an airplane to Malmö and from there take the night train which arrives in Stockholm in the morning. Or, if he travels from Switzerland, Zürich, he could make the trip by airplane in one single day."*

Mr Vasseur visited the secretariat in Stockholm several times during the war. In the beginning, two secretary-assistants, Mrs Lebègue and Mrs Bellay also came from Paris in order to assist the Swedish personnel. They returned to Paris at the end of 1941 when they were replaced by Miss Greta Lundh.

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14 Dr Frédérique Eisemann, op.cit. in footnote 3 above, p. 396.

## 5 The First Session in the ICC Court in Stockholm on 18 April 1940

On Thursday 18 April 1940, the ICC Court of Arbitration held its first, solemn, session in Stockholm under the presidency of Mr Algot Bagge. Twelve members were present, coming from Belgium, Denmark, Finland, Germany, Italy, Norway, the Netherlands, Sweden, Switzerland, the United Kingdom, the United States and Yugoslavia. The UK and Yugoslavia had finally, despite their initial reserve, also accepted naming a member to the Court in Stockholm.

The president of the Swedish national committee, Mr Edström, made a short introductory statement, followed by the Court's president, Mr Bagge who said:

*“La Chambre de Commerce Internationale nous a fait le grand honneur de nous confier cette tâche si haute et si pleine de responsabilité. Je suis sûr que nous ferons notre mieux pour nous montrer dignes de la confiance qui nous a été ainsi témoignée.*

*Il sera, pour notre Cour, un devoir hautement apprécié de suivre impartialement – autant que cela est possible pour des êtres humains – les principes de la justice dans la ferme conviction que, sans une fidélité inébranlable à ces principes, rien dans ce monde ne peut se maintenir.”*

The Court then examined four cases, case numbers 633, 649, 677 and 688 (see below for details). I observe in this context that the United States of America was the only non-European country present.

## 6 The Following Sessions

More sessions followed; the second and the third respectively on 23 May and 12 September 1940.

At the third session, a new matter was submitted to the Court, case 720 between Vernal SA, Geneva and Oxal SA, Turin. Further, at this session the Court agreed to deal with cases in which one of the parties was English since the situation of the ongoing war no longer permitted UK cases to be dealt with in Paris (*“da eine Behandlung der Streitfällen an denen englische Firmen beteiligt sind, unter den nunmehrigen Umständen keinesfalls in Paris erfolgen kann...”*).

At its fourth session on 9 November 1940, the Court took note of information coming from Paris: interruption in postal communications and traveling restrictions, rendering the good functioning of the Court in Paris difficult and even at times impossible.

Upon the proposal of the Swiss member, the Court then decided to encourage all ICC national committees to send new requests for arbitration they received direct to the Court in Stockholm.<sup>15</sup> This initiative was later

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<sup>15</sup> Under the ICC Rules in force at the time – in force since 1 January 1940 – a party could send its request for arbitration to the ICC National Committee in his home country, or



confirmed by the Court of Arbitration in Paris – in May and July 1941. In a letter dated 14 July 1941, Mr Edström, the president of the Swedish National Committee, informed the national committees that all new matters should be sent to the Court in Stockholm.

At this fourth session the Court in Stockholm took note of a decision made by the Court in Paris: in the event that due to the war, the work of the Paris Court became impossible, this Court would inform the parties that they were free to bring matters before ordinary courts of law, if they preferred, by virtue of article 4 of the Geneva protocol of 24 September 1923 which allows this possibility when the arbitration clause becomes “inoperative”.

The fifth session in Stockholm took place on 15 February 1941 and the sixth on 17 March.

At the seventh session on 17 June 1941, two members of the Paris Court were present, M.A. Voigt-Hansen, vice-president of the Court, and André Babelon, the French member who was participating for the first time.

The Court met in Stockholm again on 20 October 1941, 15 April 1942 and for the tenth time on 25 August 1943 in spite of the growing difficulties in postal communications which delayed the treatment of the files.

## **7 The Cases**

In early 1940, the Stockholm Court handled five arbitration cases between ‘neutral’ and German (and one Austrian) parties:

-no. 633, *Maschinenfabrik Esslingen, Esslingen, v Soc. Impianti Fonderie Mario Olivo & Co., Milan*. Claimant requested from respondent payment and production of accounts showing the respondent’s production under license and sale of boilers in Italy and in Italy’s colonies. The case was ready to be submitted to conciliation;

- no. 649, *Mr Lissauer & Co., Cologne, v Cementia Holding AG, Zürich and Adria Bauxit, Split (Yugoslavia)*. The dispute related to payment problems in the clearing process between Germany and Yugoslavia following delivery of bauxite from Yugoslavia to the German buyer. In this case, in which the Yugoslav respondent contested the jurisdiction of the Stockholm Court, the Court decided to fix the place of arbitration in Yugoslavia, the country of one of the respondents, in order to ensure enforcement of the future award.<sup>16</sup>

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directly to the Court’s secretariat. In the first case, the National Committee forwarded the file to the Court of Arbitration. In the second case, the secretariat informed the National Committee of the new request. This way, the National Committee was always informed of new cases. The ICC arbitration rules of 1955, 1975 and 1988 had the same provision but from 1998 a change was made, all requests for arbitration shall be sent directly to the Court’s secretariat in Paris: the National Committee is not informed. This change was made in order to protect the confidential nature of ICC arbitration and to make it clearer that the Court of Arbitration is a distinct and independent body within the ICC organisation.

<sup>16</sup> Sitzungsbericht 17. März 1941 p. 2.

The ICC Court's practice was to fix the place of arbitration in the respondent's country. If this was not possible, or convenient, the Court informed the parties in a memorandum that should the losing party not enforce the award voluntarily, the winning party could invoke the Convention for the execution of foreign arbitral awards, signed at Geneva on 26 September 1927. The reader will remember that the New York Convention was not yet in force at the time of this case<sup>17</sup>:

-no. 677, SPRL Heinrich Rainer Ltd, Brussels, v Schoengut & Freund, Vienna, relating to the quality of flour. After having received a partial delivery the buyer refused to take further deliveries. Both parties claimed damages from the other;

-no. 688, Gioacchino Saitto, Rome v E&C Kreuzberger, Berlin, relating to the sale by the Italian claimant of 120 tons of blood containing albumin. The purchaser refused acceptance of the goods since he had not obtained import license. In this case the Court of arbitration appointed a Danish arbitrator;

-no. 702, Verteilungstelle für Clorkalk, Frankfurt am Main v AB Nordsvenska Bruk, Stockholm, relating to a long-term contract whereby the respondent had undertaken to buy certain quantities of chlorine in the period 1937 – 1942 for the needs of a Swedish consortium Mo & Domsjö. The Court appointed a Swiss arbitrator who called the parties to a hearing in Berne.

During the summer of 1940 a new case was registered under the number 713, Nordjyske Andelsslagteriers Fabrikker, Norresundby (Denmark) v E & C Kreuzberger, Berlin. This case presented some difficulties relating to the jurisdiction of the ICC Court in Stockholm, since the arbitration clause was drawn up as follows:

*“Im Falle von Streitigkeiten entscheidet die Internationale Handelskammer, Paris, Zweigstelle London”* In case of dispute, the International Chamber of Commerce, Paris, London branch, decides).

The Stockholm Court asking itself whether the parties had agreed on London as the seat of the arbitration, decided to invite the parties' comments before deciding on its jurisdiction. If the Court received no communication from the parties within the timeframe stipulated in the Court's letter, or if the parties' communication did not further enlighten the Court, the Court would decline jurisdiction over the dispute.<sup>18</sup> In fact, at its fourth session, on 9 November 1940, the Court declined jurisdiction.

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17 Convention on the recognition and enforcement of foreign arbitral awards, done at New York on 10 June 1958, United Nations treaty series vol. 330 p 38 no. 4739. The convention entered into force on 7 June 1959. Basically, under the convention contracting states must recognize arbitration agreements and enforce foreign arbitral awards; the courts in contracting states shall not accept jurisdiction over disputes where the parties have signed an arbitration clause but refer such parties to arbitration.

18 Sitzungsbericht 27 September 1940.

At this same fourth session, two new cases were submitted to the ICC Court in Stockholm although they should normally have been submitted to the ICC Court in Paris:

-case 716a, NV Oxyde, Amsterdam v AS Ferro Metal, Oslo, and

-case 716b, AS Ferro Metal, Oslo v AS Knaben Molybdaengruber, Oslo.

These two cases, where the parties were Dutch and Norwegian, had been submitted to the Court in Paris but this Court could not effectively handle the cases because of the political developments in Europe: there were no postal communications between Paris, on the one hand, and the Netherlands and Norway, on the other. For this reason the files were transferred to the ICC Court of arbitration in Stockholm.

At its fifth session, on 15 February 1941, the Stockholm Court took note that a total of 23 ICC cases were pending, of which 16 were handled by the Court in Paris and 7 in Stockholm. Three cases were transferred from Paris to Stockholm at this session:

-case 709, Gugenheim, Casablanca v Industrie-Handelsonderneming Indrag, Amsterdam, relating to non-payment of a delivery of iron:

-case 710, Gugenheim, Casablanca v Simob, Brussels, relating to non-payment of a delivery of iron, with a counterclaim by the respondent:

-case 718, Empresa de Trabalhos Metropolitanos e Coloniais Mecotra, Lissabon v Sociedade de Empreitadas e Trabalhos Hidraulicos Lta Seth, Lissabon.

At this fifth session, the Stockholm Court received directly a new request for arbitration, Dr Walter Hecht, Vienna v Loka, Yugoslavia, a dispute over an exclusive license under a Yugoslav patent for the growing of seeds.

ICC case 729, Fa Otto Schwedler, Greiz v Fa Bröderna Wennerlund, Borås (Sweden) relating to payment for goods transported aboard a ship that had been sunk in the Baltic sea, was submitted to the Court in Stockholm in August 1943.

## **8 The Court's and the Secretariat's Working Methods**

In those years, notifications and communications of documents from one party to another, and to or from the Paris Court's secretariat, were not made directly but through the ICC National Committee of the party concerned. The below instruction is a good example; it is a letter dated 2 February 1940 from the secretary general of the Paris Court to the Swedish ICC National Committee:

*“Pour la nouvelle affaire 713 (litige danois-allemand), je vous remercie à l'avance de l'envoi que vous m'annoncez d'une copie de l'exposé de la maison danoise. Vous voudrez bien envoyer cet exposé, par l'intermédiaire du Comité National allemand, à la partie allemande. A ces fins, je me permets de joindre*

*une lettre type par laquelle nous avons l'habitude de notifier à la partie défenderesse la demande de demandeur."*

The letters at this time, like the model letter which the secretary general of the Paris Court sent to his colleague in Stockholm on 2 February 1940, all show that the ICC Court systematically asked the parties, at the beginning of each case, whether they wanted to engage in an attempt at conciliation. In the mentioned 2 February 1940 letter, Paris explained to Stockholm the road to follow:

*"As soon as the exchange of pleadings phase is over, and presuming the parties had accepted a conciliation procedure, it is up to the Conciliation Commission to intervene according to articles 1 to 4 of the Rules. In the hypothesis that one of the parties opposes the conciliation procedure, and where the question of jurisdiction is raised, then the Court must intervene and decide according to article 10.3 of the Rules of Arbitration."*

The conciliation procedure was of obvious economic interest for the parties. If, in fact, the conciliation succeeded, the Court's fees would be a maximum of 500 French francs.<sup>19</sup>

Even considering the option for a party to submit a request for ICC arbitration to the Court in Stockholm, the ICC could not entirely escape the practical difficulties caused by the war. For instance, in a case between French and Swiss parties it was noted that there existed no postal services between Tourcoing (France) and Stockholm, although they functioned between Stockholm and Switzerland. On the other hand, postal service was available between Tourcoing and Paris but not between Paris and Switzerland. So, whether one chose ICC arbitration in Paris or Stockholm, the difficulties of communication made it impossible to effectively administer the case.

## 9 The Costs of Arbitration

Every request for arbitration had to be accompanied by an advance payment of 500 French francs, the currency chosen by the ICC Court of Arbitration in Paris. In March 1941 the members of the ICC Court in Stockholm decided to change the currency and the amount to 100 Swedish crowns, following the devaluation of the French franc.<sup>20</sup> The weaker French currency was not sufficient to cover the costs of administering the cases in Sweden.<sup>21</sup>

Concerning the costs of arbitration, the parties were given some idea when reading the instructions in the secretariat's letter to the parties in the beginning of each new case. It was indicated that the arbitration costs "were rarely lower

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19 Letter dated 14 February 1940 to the ICC Court in Stockholm.

20 Sitzungsbericht, 6. Sitzung in Stockholm, 17. März 1941 pp 2-3.

21 By comparison, early 2016 the filing fee is USD 3,000.

than 2.000 French francs ... and that it was exceptional for the costs to exceed 10.000 French francs”.

## 10 The Languages

In 1939 and 1940, French and German were the two languages used by the ICC Court of Arbitration in Stockholm, with a prevalence of French. The correspondence between Paris and Stockholm was almost exclusively in French; and so was the correspondence between Stockholm and the ICC National Committees.

English was practically not used, except for letters and telegrams emanating from the British National Committee. However, the ICC Courts in Paris and Stockholm exchanged their agendas and records in both a French version (two copies) and an English one (one copy).

The ICC National Committees and the diplomatic legations in Stockholm wrote to the Swedish National Committee either in French or in German regarding the nominations of members to the Court in Stockholm. As time went by, German became the dominant language, judging from the Court's records. I could not find any Court record originally drawn up in English from the period 1940-43.

## 11 The Merger of the Two Courts of Arbitration on 1 January 1943

On 28 February 1943, president Edström announced that the ICC had put an end to the separation of its two courts in Paris and Stockholm:

*“Depuis le 1er janvier 1943, la Cour d'arbitrage constitue un corps unique; l'organisation antérieure en vertu de laquelle les membres de la Cour à Stockholm étaient suppléants des membres de la Cour de Paris a pris fin au 1er janvier 1943. Désormais les membres de Paris et de Stockholm appartiennent à une seule et même Cour d'Arbitrage”.*

In an explanatory note attached to the announcement, it was mentioned that the ICC Court of Arbitration operated in two chambers, one in Paris and the other in Stockholm.

In view of the doubts expressed by several companies regarding the functioning of the ICC Court of Arbitration, the president of the Swedish National Committee published another note, in German, on 20 June 1943, in which he confirmed that ICC arbitration was upheld and that the Court of Arbitration had two chambers, in Paris and in Stockholm:

*“Wir weisen erneut darauf hin daß das Schlichtungs- und Schiedsverfahren der Internationalen Handelskammer auch während des Krieges in Geltung geblieben ist. Zu diesem Zweck tagt der Schiedsgerichtshof der I.H.K. seit April*

*1940 in zwei Abteilungen – in Paris und Stockholm. (...) Im Stockholmer Schiedsgerichtshof der I.H.K. sind gegenwärtig 15 Länder vertreten.”*

On 1 January 1943, the ICC Court of arbitration was made up as follows.

**President**

Algot Bagge, Justice at the Supreme Court of Sweden;

**Vice-presidents**

Albert Buisson, member of the French Institute, honorary president of the Commercial Court of the Seine, Paris;

Emil Sandström, Justice at the Supreme Court of Sweden;

Georg von Schnitzler, member of the management of I.G. Farbenindustrie AG, Frankfurt am Main;

Albert Voigt Hansen, director of the insurance company A. Voigt Hansen, Paris;

**Honorary vice-president**

Henri Sambuc, Paris

**Members**

Belgium – Albert Deblandre

Denmark – H.J. Axel Jöhncke

Finland – Karlo Brusin; Hjalmar Krogus

France – André Babelon; Albert Buisson

French Africa – Bernard Desouches

Germany – Gerhard Riedberg

Hungary – Anton Grundböck; Charles Binder-Kotrba

India – Chandulal Jeychand Gujar

Italy – Gino del Neri; Teodore Pigozzi

Netherlands – A.M. de Jong; J.W. Wynaendts

Norway – Albert Voigt Hansen; Henning Throne-Holst

Portugal – José Pedro Ferreira dos Santos

Spain – Lorenzo Gomez Quintero

Sweden – Thor Carlander; Emil Sandström

Switzerland – Adolf Elsässer; Max Vischer (Jacques de Pury, suppléant)

United Kingdom – Arthur J. Johnson; Fred Thompson

United States – Christen C. Skriver; William H. Wadhams

**Technical counsel**

René Arnaud, Paris; Gerhard Riedberg, Stockholm (responsible for liaison between Paris and Stockholm)

## 12 Some Brief Observations

The ICC Court of arbitration in Stockholm was set up quickly considering the practical difficulties caused by the war and the uncertainty in Europe. In little time it counted more than ten members: the required quorum for it to make valid decisions, six members present, could then be fulfilled.

Its role was useful even though it could not settle all disputes. Thus, it would not intervene in disputes where the two parties came from countries at war with each other; such disputes had to wait until the end of the war. The Court, however, had jurisdiction to settle disputes where one of the parties was from a country at war and the opposite party was from a 'neutral' country, i.e. a country not at war.

In the years 1940-43, the Court held ten plenary sessions in Stockholm; at these sessions it dealt with some 15 arbitration and/or conciliation cases.

Interesting is the decision the ICC took to declare that the two courts, in Paris and Stockholm, were two chambers of the same court, the ICC Court of Arbitration. This decision, caused by the difficult conditions during the war, led to a unique situation; it was the first time, as far as I am informed, that the ICC Court operated in two different geographical locations with two sets of court members. It has not been done subsequently. In recent years, however, the Court's secretariat has established teams working from permanent offices in three different time-zones, Paris, Hong Kong and New York. But deliberations between Court members and scrutiny of draft awards continue to be made in one place only, Paris.

Contrary to the present situation, where internationally practicing lawyers constitute the majority of the members of the ICC Court of Arbitration, the majority of the members of the ICC Court in Stockholm were businessmen. When the Court was constituted, only the president and the secretary general were lawyers. Mr. Elsässer, who worked for a Swiss chemical company, and Mr. de Jong, a Dutch businessman, have already been mentioned above. The Norwegian member, Henning Throne-Holst, was the CEO of the company Marabou, a chocolate producer. The Belgian member, Albert Deblandre, was an assistant director of the company Englebert Gummi AB, a producer of tires. Robert W. Seeley, the US member, was a director of the automobile group General Motors.

The Court's members were predominantly Europeans; the United States was the only non-European country to have designated a member from the beginning.

Like today, no Court members were remunerated; sitting on the Court is an honorary role.

As regards the disputing parties, they were mostly European.

Finally, conciliation played a more important role in the Court's work than it does today. On this point, however, the wind may be turning.

## **Enclosures**

- 1) Letter dated 9 January 1940 from the ICC, Paris, to the secretary general of the Swedish National Committee of the ICC (in French, 3 pages).
- 2) Note regarding costs in ICC arbitration (in French, 1 page).
- 3) Letter of summons to the first session of the Court in Stockholm on 18 April 1940 (in French, 1 page).
- 4) Letter of summons to the fourth session of the Court in Stockholm on Saturday 9 November 1940 (in German, 1 page).
- 5) Note from the Court in Stockholm with information on ICC arbitration and the recommended ICC clause, dated 20 June 1942 (in German, 1 page).
- 6) Letter from president Bagge of the ICC Court of Arbitration in Stockholm announcing that since 1 January 1943 the two courts in Paris and Stockholm are one and the same court (in French, 1 page).



TELEGRAMMES : INCOMERC-PARIS 86

TÉLÉPHONE : ÉLYSÉES 05-92 (CINQ LIGNES)

## CHAMBRE DE COMMERCE INTERNATIONALE

INDUSTRIE - FINANCE - COMMERCE - TRANSPORTS

### SECRETARIAT GENERAL

38, COURS ALBERT 1<sup>er</sup> - PARIS, VIII<sup>e</sup>

Pièces jointes : 1

Votre Référence :

Notre Référence : RM

Date: 9.1.1940 cl

2016

#### Cour d'Arbitrage

Cher Monsieur,

Comme vous le savez, le Conseil, à sa session du 10 novembre 1939 à Amsterdam, a bien voulu approuver le vœu émis par la Cour d'Arbitrage à sa session du 6 novembre concernant le fonctionnement de l'arbitrage de la C.C.I. en pays neutre, à savoir, Stockholm, pour les litiges entre des parties, d'une part, neutres et, d'autre part, allemandes. Cette décision est devenue définitive par l'adhésion du Comité National allemand, réservée à la session du 10 novembre et intervenue entretemps.

D'autre part, le Gouvernement français vient d'autoriser, par arrêté du 9 décembre, le fonctionnement de la Cour d'Arbitrage pour la dite catégorie de litiges.

Par même courrier, je demande à Monsieur le Président de la C.C.I. de bien vouloir désigner les membres suppléants de la Cour, résidant à Stockholm qui remplaceront les membres titulaires se trouvant dans l'impossibilité de siéger, le cas échéant, à Stockholm.

En conséquence, nous avons informé dans ce sens les différentes organisations et personnes qui, soit pour l'insertion de la clause d'arbitrage de la C.C.I. dans leurs contrats, soit pour le règlement des différends en vertu d'une clause d'arbitrage figurant dans le contrat litigieux, se sont adressées à nous.

C'est ainsi qu'un litige danois-allemand va vous être soumis par le demandeur danois, litige qui a fait l'objet d'une discussion à la dernière session de la Cour d'Arbitrage de la C.C.I., dont je me permets de vous remettre sous ce pli un exemplaire du procès-verbal.

Je vous serais reconnaissant de bien vouloir transmettre l'exposé danois au Comité National allemand pour être communiqué par celui-ci au défendeur et de me faire tenir une copie à titre d'information.

Monsieur W.G.Stiernstedt,  
Secrétaire du Comité National suédois  
de la Chambre de Commerce Internationale,  
9, Västra Trädgårdsgatan,  
STOCKHOLM  
(Suède)

11 25.1.40

C.C.I.

- 2 -

M. W.G. Stiernstedt

Dans cet ordre d'idées, j'ai l'honneur de vous signaler les affaires en cours suivantes où il s'agit d'arbitrages entre des parties, d'une part, neutres, et, d'autre part, allemandes, arbitrages qui, d'après la décision du Conseil, sont de votre compétence:

Affaire No.633 - Maschinenfabrik Esslingen, Esslingen c/Soc. Impianti Fonderie "Olivo" Mario Olivo & C°, Milan.

Le litige porte sur le paiement de redevances et la production de comptes en vertu d'un contrat par lequel le demandeur a cédé au défendeur, le droit exclusif de fabrication et de vente, pour l'Italie et ses colonies, des produits "EK.Pakete" (genre de chaudière) protégée par certains brevets.

L'affaire est en l'état pour être soumise à la procédure de conciliation.

Affaire No.649 - M.Lissauer & C°, Cologne c/Cementia Holding A.G. Zurich et Adria Bauxit, Split.

Le litige limité, paraît-il, provisoirement et d'un commun accord entre les parties, à l'arbitrage entre Lissauer et Adria Bauxit, porte sur l'exécution d'un contrat de livraison de bauxite par la maison yougoslave à la maison allemande, livraison refusée par la défenderesse en vertu des difficultés de paiement résultant d'une modification du clearing germano-yougoslave.

Les parties sont en discussion sur la rédaction du texte du compromis.

No.677 - S.P.R.L. Heinrich Rainer Ltd., Bruxelles c/Schoengut & Freund, Vienne

Le litige porte sur l'exécution de deux contrats aux termes desquels le défendeur a vendu au demandeur de la farine contenant un certain pourcentage de nitrogène; une partie a été livrée que le demandeur considère comme ne correspondant pas à la qualité stipulée; le différend a donné lieu à des demandes de dommages-intérêts de part et d'autre.

Le litige est prêt à être soumis à l'arbitre néerlandais nommé par la Cour.

No.688 - Giocchino Saitto, Rome c/E. & C. Kreuzberger, Berlin.

Le litige porte sur l'interprétation d'un contrat par lequel le demandeur a vendu au défendeur 120 tonnes d'albumine de sang, marchandise dont le défendeur refuse de prendre livraison du fait qu'il n'a pu obtenir les autorisations nécessaires à l'importation.

Les parties sont en discussion sur le texte du compromis.

D'autre part, la Cour a d'ores et déjà nommé un arbitre danois.

C.C.I.

- 3 -

M. W.G.Stiernstedt

No.702 - Verteilungsstelle für Chlorkalk, Frankfurt s/Main c/A.B.Nordvenska  
Bruk, Stockholm.

Le litige porte sur l'exécution d'un contrat du 30 juillet 1937 par lequel la défenderesse, chargée des achats et des ventes du Consortium Modomsjö à Stockholm, s'engageait à acheter à la demanderesse, jusqu'à la fin de 1942, la totalité des besoins en chlore de la Modomsjö, dans la mesure où ils ne pouvaient être couverts par la propre production de celle-ci.

Le différend résulte du fait que la Modomsjö a augmenté, en mai 1938, sa propre production de chlore, au delà de sa capacité maximum de production au moment de la conclusion du contrat.

L'arbitre suisse nommé par la Cour, a été saisi du dossier et avait déjà fixé l'audition des parties au 14 septembre à Berne.

L'audience a été ajournée à cause de la situation de guerre.


L'arbitre, par lettre en date du 22 septembre, a informé la Cour que selon une communication de la défenderesse des négociations transactionnelles directes entre les parties étaient envisagées ultérieurement à Stockholm.

Depuis, nous sommes sans nouvelles concernant le développement de cette affaire.

. . .

Je vous prie de bien vouloir porter à la connaissance des Comités Nationaux Intéressés dans les affaires ci-dessus, pour qu'ils en informent les parties en cause, qu'en vertu de la décision prise par le Conseil à sa session du 10 novembre, ces arbitrages pourront être poursuivis, et je me tiens à votre disposition pour tous renseignements ultérieurs qui, à la suite des réponses des parties, pourront vous sembler utiles.

Veuillez agréer, cher Monsieur, l'expression de mes sentiments très distingués.

  
Secrétaire Général  
Pr. le Secrétaire Général de la  
Cour d'Arbitrage

## **CHAMBRE DE COMMERCE INTERNATIONALE**

**38, Cours Albert I<sup>er</sup>, Paris (8<sup>e</sup>)**

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### **Cour d'Arbitrage**

#### **FRAIS ET DÉPENS DE LA PROCÉDURE**

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1. Si l'affaire est susceptible d'être réglée en conciliation suivant la procédure définie à la Section A du Règlement et à la page 6 des « Conseils Pratiques », et si les deux parties acceptent la formule de règlement qui leur sera proposée par la Commission de Conciliation, les frais seront pour chacune des parties, de Frs fr. 500. Ils doivent être versés à l'avance par provision.

2. Si cette tentative de conciliation échoue, ou si par nature l'affaire ne peut faire l'objet d'une conciliation, si enfin l'une des parties ou les deux parties préfèrent que l'on procède immédiatement à l'arbitrage, les frais et dépens de l'arbitrage proprement dit seront rarement inférieurs à Frs fr. 2.000. Naturellement, cette somme peut augmenter selon le temps demandé pour l'étude du dossier par le Secrétariat Général, la quantité de correspondance échangée par le Secrétariat avec les parties, le nombre des séances arbitrales, les frais de voyage à rembourser, le cas échéant, à l'arbitre ou aux arbitres, les frais éventuels d'expertise technique ou de consultation juridique et les honoraires alloués par la Cour d'Arbitrage à l'arbitre ou aux arbitres. La brochure « Conseils Pratiques » contient, dans ses dernières pages, des exemples de litiges réglés par la Cour d'Arbitrage avec le chiffre des frais entraînés par ces affaires.

Il est exceptionnel que les dépens dépassent la somme de Frs fr. 10.000; il est rare qu'ils atteignent cette somme. La Cour d'Arbitrage s'efforce toujours de maintenir les frais dans de justes limites. Elle fixe elle-même les provisions à demander aux parties.

Quant au règlement de ces frais et dépens de l'arbitrage, il dépend naturellement de la sentence arbitrale elle-même, l'arbitre pouvant condamner une partie à la totalité des frais et dépens ou, au contraire, mettre une portion des frais et dépens à la charge de chaque partie.

Toute demande d'arbitrage envoyée au Secrétariat Général de la Chambre de Commerce Internationale doit être accompagnée d'une provision de Frs fr. 500.

CABLES: HANDELSKAMMAREN-STOCKHOLM

TELEPHONE: 23 13 12

**INTERNATIONAL CHAMBER OF COMMERCE**

INDUSTRY - BANKING - TRADE - TRANSPORT

**SECRETARIAT IN STOCKHOLM**

VÄSTRA TRÄDGÅRDSGATAN 9

Encl.: 1

Your Ref.:

Our Ref.: jkl.

Date: 11 avril 1940

COUR d'ARBITRAGE  
1ère Session à Stockholm

Cher Monsieur,

J'ai l'honneur de vous faire connaître que la première Session de la Cour d'Arbitrage de la Chambre de Commerce Internationale à Stockholm aura lieu à la Chambre de Commerce de Stockholm, Västra Trädgårdsgatan 9 (rez-de-chaussée)

le jeudi 18 avril à 10 h.30

Vous voudrez bien trouver ci-joint l'Ordre du Jour de cette session.

J'espère très vivement qu'il vous sera possible d'honorer cette réunion de votre présence et je vous prie d'agréer, cher Monsieur, l'assurance de mes sentiments les plus distingués.

Secrétaire

TELEGRAMMADRESSE: HANDELSKAMMAREN-STOCKHOLM

TELEPHONE: 211312

# INTERNATIONALE HANDELSKAMMER

INDUSTRIE - FINANZ - HANDEL - TRANSPORT

## SEKRETARIAT IN STOCKHOLM

VÄSTRA TRÄDGÅRDSGATAN 9

Anlagen:

Ihr Zeichen:

Unser Zeichen 2/jKl.

Datum: 2. Nov. 1940

### SCHIEDSGERICHTSHOF

#### 4. Sitzung des Schiedsgerichtshofes der I.H.K. in S t o c k h o l m

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Ich gestatte mir hiermit, Sie zu der nächsten  
Sitzung des Schiedsgerichtshofes der Internationalen  
Handelskammer in Stockholm

am Sonnabend, d. 9. November 1940, 10 Uhr 30  
in den Räumen der Stockholmer Handelskammer, Västra  
Trädgårdsgatan 9 ergebenst einzuladen.

Die Tagesordnung zu dieser Sitzung geht Ihnen  
in den nächsten Tagen zu.

Ich hoffe sehr, dass es Ihnen möglich sein  
wird, an dieser Sitzung teilzunehmen und begrüße Sie

In vorzüglicher Hochachtung



Sekretär

151 4. 11. 40

Baron Gordon W. Stiernstedt,  
Sekretär der Schwedischen Gruppe  
der Internationalen Handelskammer,  
Västra Trädgårdsgatan 9,

S t o c k h o l m

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Schiedsgerichtshof  
der  
Internationalen Handelskammer in Stockholm .

Wie Svenska Nationalkommissionen för Internationella Näringsfrågor aus verschiedenen Schreiben in letzter Zeit ersehen hat, sind manche Firmen über die gegenwärtige Lage der Schiedsgerichtsbarkeit der Internationalen Handelskammer noch in Zweifel. Wir weisen daher erneut darauf hin, dass das Schlichtungs- und Schiedsverfahren der Internationalen Handelskammer auch während des Krieges in Geltung geblieben ist. Zu diesem Zweck tagt der Schiedsgerichtshof der I.H.K. seit April 1940 in zwei Abteilungen - in Paris und in Stockholm. Der Schiedsgerichtshof in Stockholm, der im April 1940 errichtet worden ist, steht unter Vorsitz von Justitierådet Algot Bagge und tritt von Zeit zu Zeit im Hause der Stockholmer Handelskammer zusammen. Die letzte Sitzung hat am 15. April 1942 stattgefunden. Im Stockholmer Schiedsgerichtshof der I.H.K. sind gegenwärtig 15 Länder vertreten. Die Geschäftsführung liegt in Händen von Herrn Hovrättsfiskal Sture Petré.

Die Schiedsklausel der I.H.K. kann demnach in unveränderter Weise in alle Verträge mit ausländischen Firmen aufgenommen werden. Als geeignetste Fassung der Klausel hat sich die folgende erwiesen:

"Alle aus dem gegenwärtigen Vertrag sich ergebenden Streitigkeiten werden nach der Vergleichs- und Schiedsgerichtsordnung der Internationalen Handelskammer von einem oder mehreren gemäss dieser Ordnung ernannten Schiedsrichtern endgültig entschieden."

Für alle Auskünfte steht Svenska Nationalkommissionen för Internationella Näringsfrågor, V. Trädgårdsgatan 9, Stockholm, interessierten Firmen gern zur Verfügung.

Stockholm, den 20. Juni 1942.

Chambre de Commerce Internationale

Stockholm  
28.2.1943

Arbitrage

No.9

Mon cher Président,

Comme les Comités Nationaux le savent, l'activité de la C.C.I. en matière d'arbitrage n'a pas été interrompue par la guerre.

La clause d'arbitrage de la C.C.I.: "Tous différends découlant du présent contrat seront tranchés définitivement suivant le Règlement de Conciliation et d'Arbitrage de la Chambre de Commerce Internationale par un ou plusieurs arbitres nommés conformément à ce Règlement" est utilisée actuellement comme avant la guerre, de façon constante dans les contrats de caractère international.

C'est au Secrétariat de la Cour d'Arbitrage de la C.C.I., 9 Västra Trädgårdsgatan à Stockholm (Secrétaire de la Cour à Stockholm: Hovrättsfiskal Sture Petré) que doivent être adressées les demandes d'arbitrage.

Le Président de la Cour, Monsieur le Conseiller Algot Bagge, Juge à la Cour Suprême de Suède, décide dans chaque cas si les affaires dont il est saisi seront traitées à Stockholm ou à Paris. Sa décision se fonde sur la volonté des parties ou sur les circonstances particulières afférentes aux cas traités et spécialement sur les possibilités de relations postales ou de voyages entre les pays auxquels les parties appartiennent de même qu'entre Stockholm et Paris.

Quand les parties d'un commun accord auront préféré remettre leurs dossiers au secrétariat de la Cour à Paris, le Secrétaire Général de la Cour adressera aussitôt un exposé de l'affaire au Président pour qu'il décide si l'affaire sera traitée à Paris ou à Stockholm.

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Depuis le 1er janvier 1943, la Cour d'Arbitrage constitue un corps unique; l'organisation antérieure en vertu de laquelle les membres de la Cour de Stockholm étaient suppléants des membres de la Cour de Paris a pris fin au 1er janvier 1943. Désormais les membres de Paris et de Stockholm appartiennent à une seule et même Cour d'Arbitrage.

A la suite de plusieurs décès, de changements de domicile, etc. au cours des deux dernières années, de nouvelles nominations ont été nécessaires. Après prise de contact avec les Comités Nationaux des pays intéressés et en vertu des pleins pouvoirs qui m'ont été conférés par le Conseil dans sa séance du 10 novembre 1939, j'ai décidé que ces nominations prendraient effet à partir du 1er janvier 1943.

La Cour est donc composée, à dater du 1er janvier 1943, de la façon suivante:

Président:

Algot Bagge

Juge à la Cour Suprême de Suède

Stockholm