

Peter Tochtermann:
1st ICC International Commercial Mediation Competition in Paris 2005

(Peter Tochtermann was one of the judges in the ICC International Commercial Mediation Competition.)

The International Chamber of Commerce (ICC) in collaboration with the Dispute Resolution Section of the American Bar Association organized the first ICC International Commercial Mediation Competition in Paris from 14 – 16 January 2006. Whereas competitions in Alternative Dispute Resolution are held in the United States since many years, attract a great number of universities and have become a regular part of many students' academic calendar, a competition in ADR techniques is a novelty to most students from European countries. Having more than eight decades of experience in international dispute resolution, the ICC wishes to attract universities from as different countries and diverse legal backgrounds as are parties to the real world's business transactions every day. Thirteen selected student teams from Canada, France, Germany, the United Kingdom and the United States competed against each other in this pilot competition and were supported by leading professionals from all around the globe acting as mediators and judges.

I. The spirit of the competition

The ICC not only offers its services to the business world but also takes an active role in the education of law students and invites them to acquaint themselves with the different dispute resolution mechanisms, thereby bridging the gap between theory and practice. Business disputes need flexible and fast solutions preserving relationships and meeting the underlying interests of the parties as good as possible. Hence, conflicts arising in the international arena oftentimes are not addressed appropriately in an adversarial procedure like litigation or arbitration. Amicable Dispute Resolution techniques such as mediation, mini-trial, neutral evaluation or hybrid settlement procedures under many circumstances better meet the interests of parties to international business disputes. The ICC International Commercial Mediation Competition provides students from all over the world with an excellent opportunity to learn about these techniques. Most importantly the competition sensitizes students for cross-cultural aspects of negotiation and dispute resolution by allowing them to compete against students from all over the world.

II. The Competition Rules

The competition consists of four preliminary rounds, one semi-final and a final round. For this purpose five problems were sent to all invited universities before the competition. Each problem consisted of general information for all participants and confidential information for each side. All teams had to prepare a representation plan which was given to the judges prior to the mediation session. In the representation plan the teams had to elaborate on the appropriate ADR technique, on how they planned to share responsibilities between attorney and client, why they chose a particular allocation strategy, what their side's and the other side's interests were and which strategy they would follow. Whereas the judges received all information about the problem, the mediators were only provided with the general facts to encourage them to learn about the parties' needs and interests throughout the session. The student teams were provided with the general facts as well as with the confidential information for their side. Hence, they had to explore the other side's confidential information through mediation techniques like active listening and questioning. Each session run for 75 minutes followed by 30 minutes of feed-back by the judges. The teams were allowed to take an up to ten minutes caucus and one break no longer than 5 minutes. During the caucus the teams could

discuss possible solutions and their underlying needs and interests with the mediator in a confidential session. The mediator was allowed to disclose information gathered during the caucus only with the explicit consent of the respective team.

The teams as well as the mediator were invited to follow a problem-solving and facilitative mediation approach. An emphasis was put on the ability to use advocacy skills effectively and engage in a collaborative, creative bargaining style that used the opportunities in the mediation process as well as the help of the mediator to achieve an outcome of mutual gain. Whereas the attorneys had to understand and advance the client's legal and non-legal interests throughout the mediation process, they had to refrain from sacrificing the client's interests for the sake of settlement. Therefore both sides had to show that they were aware of their best alternatives to a negotiated agreement (BATNA) and able to find and shape a solution that best met their interests. The teams as well as the mediator were invited to follow a problem-solving and facilitative

The performance of the teams was judged on various criteria such as the presentation of the case in their opening statements, the teamwork between attorney and client, the ability to gather information from the other side effectively, generate creative options for settlement and the use of the power of the mediator over the process to help break impasses and move toward resolution.

III. The 1st Competition

On Friday, January 13th the thirteen participating teams as well as their coaches and the organizing committee gathered for a welcome dinner in a restaurant near the ICC headquarters in Paris. During his opening address Professor Briner, Chairman of the ICC International Court of Arbitration, Anne-Marie Whitesell, Secretary General of the ICC International Court of Arbitration, Katherine González Arrocha, Senior Counsel for the ICC Dispute Resolution Services as well as Lorraine Brennan, Director, Arbitration and ADR, North America, ICC International Court of Arbitration, welcomed all participants and underlined the unique character of this first ever international commercial mediation competition. The next day the teams gathered at the ICC headquarters, situated at the Seine River within the Eiffel tower's inimitable presence to compete against each other in the preliminary rounds. The first problem dealt with an Indian technology consultancy company holding patents on a ceramic product in Germany, the USA and Japan. The Indian company alleged that a German manufacturing company it had approached to manufacture and market the product worldwide had infringed the patent by trying to market its invention as a unique dental ceramic product with the help of a former employee. As the preliminary rounds moved on the student teams had to deal with other topics as diverse as franchising and insurance contracts, unfair competition by a food company as well as an unwarranted and unfair dismissal of a managing director. After two days of intense competition, the four finalists were announced on Sunday evening. As far as the German participation is concerned it is to mention that the team from the University of Heidelberg's Heidelberg Center for International Dispute Resolution only missed the finals by a hair's breadth.

Finally the team from the University of Houston was announced to be the winner of this first ICC International Commercial Mediation Competition by ICC Secretary General Guy Sebba. He congratulated all participants and thanked the many mediation professionals who had contributed to the success of the event. Speaking at Monday's closing ceremony, Anne Marie Whitesell, Secretary General of the ICC International Court of Arbitration and head of ICC's Dispute Resolution Services, said: 'An important part of our mission here at ICC is to educate the law professionals of tomorrow about the full range of dispute resolution mechanisms designed for resolving international business disputes.' The winning team was offered an internship in the ICC's Dispute Resolution Secretariat and each member of the team received a one-year subscription to the *ICC Court Bulletin*. The runners-up received a copy of *ADR Principles and Practice* by Brown and Marriott, offered

by the Chartered Institute of Arbitrators, and those who came third were awarded a one-year subscription to the *World Arbitration and Mediation Report*, published by Jurist Publishing and Penn's State Institute for Arbitration Law & Practice.

IV. Outlook

The first ICC International Commercial Mediation Competition was a great success and will be held annually, promising to make a key contribution to the education of students in the different techniques of dispute resolution. As skills like mediation and negotiation now are a compulsory element of the law students' curriculum in Germany ("Schlüsselqualifikationen"), this competition offers a more than rewarding opportunity to fulfill this requirement and fosters the teaching and learning of effective mediation representation skills so that tomorrow's practitioners can better meet the needs of an increasingly cross-cultural global market.