



*Remembering the Year of 1985 in the
World of
Arbitration*

by

Lord Hacking

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☞ Commercial arbitration; Conferences; International commercial arbitration

An address given by Lord Hacking at his summer garden party held on July 8, 2010, looking back a quarter of a century to the events taking place in the world of arbitration in 1985.

The major event, bar none, in 1985 was the adoption of the Model Law by the United Nations Commission on International Trade (UNCITRAL) on June 21, 1985. At the time Gerold Herrmann¹ was Secretary of the UNCITRAL Working Group on Arbitration, and we acknowledge his great achievement in getting the Model Law agreed and adopted. As Jan Paulsson, the incoming President, said in May [2010] to Gerold Herrmann, as the outgoing President, at the ICCA Conference in Rio de Janeiro:

“It can be said, very simply and without fear of hyperbole, that no one has contributed more to the cause of international arbitration than Gerold Herrmann, given his tireless, indeed passionate—and successful—promotion of the UNCITRAL Model Law across the world during his decade long tenure as Director of the UNCITRAL Secretariat.”²

However, other things were also happening in 1985 in the world of arbitration. I turn first to the London International Arbitration Trust (otherwise known as LIAT). It was Martin Hunter and I who thought we should form this Trust which, having set up a Steering Committee, we did in 1980. The objective of LIAT was to promote London as a *situs* for international arbitrations, and its major contribution was to publish a brochure, the first of its kind, entitled *Arbitration in London*. The brochure was originally published in July 1983 but was re-published and distributed in 1985 for the American Bar Association meeting which was taking place in London in that year. Its Chairman was Eustace Roskill (Lord Roskill), and its Vice Chairmen were Mark Littman QC, the distinguished commercial silk, and Clifford Clark MC, the distinguished maritime arbitrator. Among its members were George Staple of (as it then was) Clifford Turner, Tony Willis of (as it then was) Coward Chance, Michael Lee of Norton Rose, Martin Hunter of Freshfields, Bill Park of Linklaters & Paines, Bill Wilson of Richards Butler and David Sutton of Allen & Overy. Importantly among its membership was also Anthony Evans QC (as he then was!) of 4 Essex Court Chambers and Ken Rokison QC (as he still is!) and the young (as he then was!) Tim Young of 3 Essex Court Chambers.

Once the LCIA became established—more about that in a moment—the role of LIAT became redundant, and it was wound up in the 1990s; however, in 1985 it was playing a leading role. The next important event in 1985, at least in the United Kingdom, relates to the London Court of International Arbitration (the LCIA)—although it was not incorporated into a company until 1986.

¹ Gerold Herrmann was the guest of honour at the garden party and received (see later in article) the highest award at it.

² See ICCA website: <http://www.arbitration-icca.org/SpecialPages/GeroldHerrmann.html> [accessed February 28, 2011].

In fact the LCIA owes its origin to the London Chamber of Arbitration, which was, on the initiative of the Corporation of the City of London, inaugurated in 1892, changing its name in 1903 to the London Court of Arbitration. It again changed its name in 1975 to the London Court of International Arbitration but, located at the Institute of Arbitrators (as the Chartered Institute of Arbitrators was called before receiving the Royal Charter) it hardly had a separate existence and had a tiny case load.

For the LCIA there were three important events in 1985. First, its Court of Arbitration was created, with at least two-thirds of its membership consisting of eminent arbitrators from outside the United Kingdom and with Sir Michael Kerr as its first President. The second important event in 1985, relating to the LCIA, was the publication, actually by the Chartered Institute of Arbitrators, of the first edition of *Arbitration International*,³ with Jan Paulsson as its General Editor and young (as he then was!) Johnny Veeder as its “Assistant Editor: Notes” and with Martin Hunter and others on its Editorial Committee (as its Editorial Board was then called).

The setting up of the LCIA Court of Arbitration was something dear to Lord Denning’s heart. He got very actively involved in the 1979 Act and, when the Act was on the Statute Book, he memorably exhorted, “The law has been reformed. The need now is a place in London where the great international arbitrations can be held”⁴ with a name which carried international neutrality. He would often remark that he liked the name of the ICC—the International Chamber of Commerce. This proved to be important in the resurrection of the LCIA, because the third important event in 1985 for the LCIA was the announcement in the Mansion House by Dame Mary Donaldson, the first and only female Lord Mayor of London, of its re-launch which, according to Mary Donaldson’s announcement, was to carry the name of the International Court of Arbitration: London.

This brings us to the critical role played by Bertie Vigrass. Bertie Vigrass had already led, as its Secretary, the Institute of Arbitrators (later “Chartered”) into the true world of arbitration and had also founded the Worshipful Company of Arbitrators. He now turned his considerable energy into the re-launch of the LCIA and the creation, as it is now, of a major institute in the world of international arbitration. In 1985 Bertie Vigrass was at the point of leaving the Chartered Institute of Arbitrators which he had joined as Secretary in 1973. It may have been a retirement from the Chartered Institute but it was not a retirement for Bertie Vigrass.

So it was, beginning in 1985, that Bertie Vigrass, supported by Michael Kerr as the LCIA President, and working without a salary at a desk in somebody else’s office, got going with the LCIA. At that time its only income was the income from *Arbitration International*, which, after the second edition, Bertie Vigrass acquired for the LCIA as the LCIA’s journal. He then developed the LCIA Symposia, which are now held worldwide over six times a year and which attract so many attendees that many have to be turned away—somewhat different from the first LCIA Symposium, which was held at Selsdon Park with 36 persons present sitting at round tables! After that Bertie Vigrass found another form of income for the LCIA in the membership fees of members of the LCIA User Councils. To spin on a bit, the LCIA, still a small entity, was bombed out of the premises of the London Chamber of Shipping in St Mary Axe by the IRA in 1993. How different from then is now the LCIA at 70 Fleet Street, with a staff of over 20 persons, with three more members of the LCIA staff in India and four more in Dubai, and with 300 active arbitration cases and a turnover in the millions. Yet none of this would have been achieved but for the persistence and energy of Bertie Vigrass, for which the starting point was the year of 1985.

³ (1985) 1 *Arbitration International*. It is to be noted that the lead article in this first issue of *Arbitration International* was written by Gerold Herrmann. Another article in this issue of *Arbitration International* was by Martin Hunter—both of whom received awards at the garden party.

⁴ Old Hall, Lincoln’s Inn, June 1979. See British Invisibles, “Delivering Results: Dispute Resolution in London” (February 2000), p.6.

There were also other events in 1985. Having been approached in the previous year by Sweet & Maxwell, Alan Redfern and Martin Hunter spent most of 1985, when not conducting their professional work, in writing and editing the proofs for the brand new book on international commercial arbitration, *The Law and Practice of International Commercial Arbitration*, whose first edition was published in 1986. It was also in 1985 that Stewart Boyd and Michael Mustill started to work on the second edition of their great philosophical treatise on commercial arbitration known by all of us as *Mustill & Boyd*⁵—although it has to be recorded that the second edition of *Mustill & Boyd* took rather longer to be published, and did not appear until 1989. It was worth waiting for!

Finally and most importantly, the complete reform of English arbitration law, resulting eventually in the Arbitration Act of 1996, had its origin in 1985, for it was in that year (I am unable to give the exact date) that the first meeting of the Department of Trade's Arbitration Committee (known as the DAC) took place. At the same time the Marriott group, founded by Arthur Marriott, was also active and was later to merge into the DAC under the chairmanship of Michael Mustill—Lord Mustill.

If, therefore, I was the Headmaster of a Prize-Giving in 1985 I would have awarded a number of prizes. First, I would have made Awards, now Posthumous Awards, starting with an Award to Eustace Roskill—Lord Roskill.⁶ It is, therefore, most right to remember, and be grateful for, Eustace Roskill's great commitment to LIAT and to the reform of English arbitration law right through to the 1996 Arbitration Act. Then a Posthumous Award should be given to Sir Michael Kerr.⁷ Michael Kerr was a person with enormous intellect who many of us thought should have got to the House of Lords. Instead he retired early from the Bench at 68 years and led the LCIA, steadfastly supporting Bertie Vigrass during its early and difficult years. Thirdly, a Posthumous Award should go to Dame Mary Donaldson coupled to John Donaldson⁸—Lord Donaldson of Lynton—for the part Mary Donaldson played in 1985 in the Mansion House and for the part played by John Donaldson in the 1979 Act, which I have earlier described,⁹ and later in the 1996 Act.

Next there should be Alumni Awards: first to Mark Littman for his leadership in the London Arbitration Group (called in short, and somewhat unfortunately, LAG) and then for his leadership in LIAT. Next an Alumni Award should go to Bertie Vigrass for his work in the Worshipful Company of Arbitrators, at the LCIA and at the Chartered Institute of Arbitrators (it was he who obtained for the Institute the Chartered status). As Andrew Drysdale said at Bertie's marriage to Betty in October 2003, Bertie was "present at the birth of the first, stimulated the resurrection of the second and prepared the third for eternal life"! Next an Alumni Award should go to Ken Rokison for the leading role he played in the 1979 Act and thereafter in serving on the DAC throughout the English arbitration reforms culminating in the 1996 Act. He also played a very prominent role in the LCIA, becoming Chairman of the LCIA Management Board. There is, however, another reason why Ken Rokison should receive an Alumni Award. As some may have forgotten, he made a major contribution to the development of our arbitration law by graciously losing in the House of Lords to Anthony Evans (now Sir Anthony Evans) in the *Bremer Vulkan*¹⁰ case, enabling Lord Diplock to invent English arbitration law not contained in the 1979 Act or elsewhere—an invention which proved to be most helpful in separating arbitrations from

⁵ Sir M. Mustill and S. Boyd, *The Law and Practice of Commercial Arbitration*, 2nd edn (London: Butterworths, 1989).

⁶ Both Eustace Roskill's widow, Elizabeth Roskill, and his son, Julian, were present to receive this posthumous award.

⁷ Diana Kerr, Michael Kerr's widow, was present to receive this posthumous award.

⁸ John and Mary Donaldson's daughter, Jenny Williams, was present to receive this posthumous award.

⁹ "Story of the Arbitration Act 1979" (2010) 76 *Arbitration* 125.

¹⁰ *Bremer Vulkan Schiffbau und Maschinenfabrik v South India Shipping Corp Ltd* [1981] A.C. 909 HL. See also the author's article on the 1979 Arbitration Act: (2010) 76 *Arbitration* 125 at 128, para.4.

court interference.¹¹ I might add that Ken Rokison also “saved the bacon” of my law firm, Richards Butler, by losing this case to Anthony Evans! It would have been most embarrassing to Richards Butler and its senior partner if he had won!

Then the Headmaster’s Award should be made to Martin Hunter for his work on the 1979 Act, for representing the IBA throughout the UNCITRAL Arbitration Working Group, for his onward work with the DAC committee, ending up as deputy chairman, and for the seminal publication of *Redfern & Hunter*. Not all of this was achieved by 1985, but a good headmaster can recognise talent for the future! The Deputy Headmaster’s Award should clearly go to Stewart Boyd. He took rather longer to produce his essay on arbitration law than did Martin Hunter but he did produce it in 1989 and it was a very good essay. Quality is the important point! The English Writing Award should go to young Tim Young for producing the first draft of the LIAT brochure, *Arbitration in London*. He began this draft with this splendid opening paragraph:

“For centuries London has been an international arbitration centre. The city houses some of the world’s leading markets in shipping, insurance, finance and commodities. Out of this considerable commercial activity has grown up one of the world’s most developed systems of arbitration for the resolution of international disputes.”¹²

Then the up-and-coming Editor Award for 1985 should go to Johnny Veeder. And how well (again a good headmaster can always recognise talent for the future) Johnny Veeder has subsequently done in his arbitration essays. Indeed he has now taken us memorably to Kremlin Square in Moscow as Nikita Khrushchev, the Chairman of the USSR Council of Ministers, and Averell Harriman, the former US Ambassador in London and Moscow, strolled across it, and even to Vladivostok and the family of Yul Brynner, the Russian-American actor, in two of his fine arbitration essays.¹³

The Head of the School Award should clearly go to Adrian Winstanley. One may ask why make the same person Head of the School for year after year? The answer is simple. If you have a good Head of the School why make another, who may not be so good? This is the sensible approach which has been followed by successive Chairmen of the LCIA Board of Management, Ken Rokison, Johnny Veeder and Arthur Harverd. The Victor Ludorum Award should go to Arthur Marriott for his ever active work in the world of arbitration—something which could be clearly recognised in 1985!

Finally there is the 1985 Chairman of the Governors’ Award which must go to Gerold Herrmann for his outstanding contribution to international arbitration. As Yves Fortier said in his tribute, recorded at the ICCA Conference of last May in Rio de Janeiro:

“Gerold Herrmann is truly the father of modern day international arbitration.”¹⁴

In recognising his feat of getting the Model Law adopted, I can do no better than quote from Jan Paulsson’s description in his Introduction to the first edition of *Arbitration International* of April 1985.

¹¹ In his Opinion in *Bremer Vulkan* Lord Diplock held back from making a court intervention notwithstanding a wanton delay for over five years by the claimant in proceeding with its arbitral claim. He did so on a new-found autonomy of the parties based upon their contractual relationship with one another—the point taken by Lord Diplock being that it was for the arbitrator and the parties to provide the remedy for delay without intervention from the courts. This was quite contrary to the policy hitherto followed by the courts, which had been quite ready to strike out arbitral claims, similar to striking out court claims, for want of prosecution.

¹² *Arbitration in London* (London: The London International Arbitration Trust, July 1983), p.5.

¹³ This is in reference to V.V. (Johnny) Veeder’s outstanding 1999 Freshfields Lecture, “Lloyd George, Lenin and Cannibals: the Harriman Arbitration” (2000) 16 *Arbitration International* 115, and to his subsequent and quite fascinating essay, “The Tetiue Mining Concession 1924–1932: a Swiss-Russian Story (Where the Arbitral Dog did not Bark)” in *Liber Amicorum. Mélanges Offerts à Claude Reymond* (Paris: LexisNexis Litec, 2004)—both essays identifying the remarkable role of arbitration, in the words of Lord Wilberforce, “to contribute to amicable settlement ... and to bring a settlement to a peaceful conclusion”.

¹⁴ See ICCA website: <http://www.arbitration-icca.org/SpecialPages/GeroldHerrmann.html> [accessed February 28, 2011].

“in Lausanne last May ... I stood at the back of the vast general meeting hall used by the International Council for Commercial Arbitration for an ‘interim meeting’ devoted to examining the UNCITRAL draft for a Model Law ... [and observed] some 530 participants, from Algeria to Chile, Singapore to the USSR ... all with special interest in arbitration [sitting] behind tables so long that the facial features could not be recognised from one end to the other. At a high podium sat a triumvirate: the Session Chairman, the Session Speaker and the Secretary. The scene was reminiscent of a United Nations gathering and, somewhat disquieting to jurists used to international law of the private nature rather than the public variety. Standing at my shoulder was one of the great names in the field, a scholar-arbitrator whose original work ... helped us all understand what would be ‘international’ about an arbitration ... shaking his head, he confessed to melancholy. Who are all these people, he asked: what are they doing to international arbitration?”¹⁵

As described by Gerold Herrmann, the genesis of the Model Law was to offer a Model Law of Arbitration to those countries which did not have such a law in place, but it turned out to become a world standard for arbitration for all countries whether or not they had in place any arbitration law. This involved Gerold Herrmann, in the words again of Jan Paulsson at the ICCA Conference of last May, acting as the “midwife” of the Model Law, visiting over 135 countries—and logging more than 200,000 air miles—not only in the context of getting the Model Law adopted but in the context of promoting “global adherence to the 1958 New York Convention”, the benefits of using “the 1976 UNCITRAL Arbitration Rules ... and an understanding of best practices in arbitration”.¹⁶

Well, not everything in the world of arbitration happened in 1985, and I have pressed some events into 1985 when their “fruition” came later. However, this journey through 1985 brings out important events which, at the time, were not considered that important. While the great debates in Vienna, Lausanne and New York, which brought about the creation of the Model Law, received a lot of attention in the arbitral world, I do not think anybody realised how great would be the impact of the Model Law in the development of arbitration. The fact is that country after country¹⁷ in the European Union (as it is now called) has brought into force new arbitration statutes all based in one way or another (including our Arbitration Act of 1996!) on the Model Law and, worldwide, it has now been adopted by 62 countries.¹⁸ The secret of its success being that it was a Model Law and not a UN Convention—thus allowing all countries who wished to adopt it much greater flexibility—the reality, I suggest, of our 1996 Act.

Similarly, a lot of other events, which I have anchored in this article to 1985, have developed an importance which, at the time, was more hoped for than envisaged, whether this be the re-launch of the LCIA or the writing of the first edition of *Redfern & Hunter*, which now, with its new editors, is in its glorious and most helpful fifth edition.¹⁹

It was an indulgence on my part to end up with a grand Speech Day Prize-Giving, but this gave the opportunity to identify how those present at last summer’s garden party have significantly contributed—nationally and internationally—to the development of arbitration. If Anthony Evans, Michael Mustill, Jan Paulsson and Alan Redfern had been able to attend

¹⁵“Introduction” (1985) 1 *Arbitration International* 2.

¹⁶This is in reference to Gerold Herrmann’s own speech at the author’s summer garden party and to Jan Paulsson’s tribute to Gerold Herrmann at the ICCA Conference of last May: see ICCA website: www.arbitration-icca.org/SpecialPages/GeroldHerrmann.html [accessed February 28, 2011].

¹⁷See the author’s article “Arbitration Law Reform in Europe” (1999) 65 *Arbitration* 180.

¹⁸See “Status: 1985 UNCITRAL Model Law on International Commercial Arbitration: 29.10.10”, available at the UNCITRAL website: <http://www.uncitral.org> [accessed February 28, 2011]. This figure includes the seven states in the USA (California, etc.) which have adopted the Model Law, but not countries like Belgium, Finland, the Netherlands, Sweden, and England and Wales, which have enacted arbitration statutes following many provisions of the Model Law.

¹⁹N. Blackaby and C. Partasides with A. Redfern and M. Hunter, *Redfern & Hunter on International Arbitration*, 5th edn (Oxford: Oxford University Press, 2009).

this occasion, they would have got their Awards and, of course, there are others who could—and should—have been identified and praised, but that will have to be at the next Speech Day Prize-Giving!