

Opening conference of the Heidelberg Center for International Dispute Resolution

By Stefan Huber

On Saturday, 8 February 2003, the *Heidelberg Center for International Dispute Resolution* held its opening conference. The *Center* is a project of the Institute for Foreign Private and Private International Law of the University of Heidelberg. It pursues the objective of establishing an ongoing exchange between practitioners and academics in the different fields of international dispute resolution. This comprises international litigation before state courts and arbitral tribunals as well as alternative dispute resolution, such as mediation. The two directors of the *Center* are Professor Herbert Kronke, Secretary General of UNIDROIT (Rome), and Professor Thomas Pfeiffer, both of them directors of the Institute for Foreign Private and Private International Law in Heidelberg. In April 2003, Professor Burkhard Heß will join the management of the *Center* after his change to the University of Heidelberg. More than 100 participants from several countries followed the invitation to come to Heidelberg for the opening conference which gave an overview of the future activities of the *Center*. Practitioners as well as academics were represented in the audience. In his opening remarks, Thomas Pfeiffer extended a warm welcome to Eberhard Rinne, Judge of the German Federal Court of Justice, Eberhard Stilz and Werner Münchbach, the Presidents of the German Courts of Appeal in Stuttgart and Karlsruhe, and a great number of attorneys and professors. Professor Pfeiffer pointed out that the exchange between academics and practitioners should serve as a basis to develop solutions for the practical needs of international dispute resolution, to both analyse and contribute to the harmonization of procedural rules, and to better integrate practitioners into the university education of lawyers.

The President (Rektor) of the University of Heidelberg, Professor Peter Hommelhoff, and the Dean of the law faculty, Professor Peter-Christian Müller-Graff, offered their congratulations to Herbert Kronke and Thomas Pfeiffer on their initiative. Peter Hommelhoff underlined the importance of the *Center* as regards research and scholarship at the University: according to Professor Hommelhoff, the *Center* is bound to add an international dimension to the concept of the University of Heidelberg of integrating practitioners in the education of lawyers. Dean Müller-Graff put an emphasis on the challenge to develop a legal framework for international dispute resolution that is able to adequately respond to practical needs. He considered the *Center* to be a valuable contribution to the investigation of this field of law.

The next part of the conference focused on arbitration and European company law. Hilmar Raeschke-Kessler, member of the board of the German Institution of Arbitration (www.dis-arb.org), analyzed the arbitrability of disputes arising within a company. As starting point he took the Council Regulation (EC) 2157/2001 on the Statute for a European company which does not provide for a uniform solution. It merely refers to the national laws which, in part, do not allow arbitration in this area. Mr Raeschke-Kessler criticized this lack of harmonization and pleaded in favour of the arbitrability of disputes arising within a company. He denied neither the problems of multiparty arbitration nor the difficulties arising out of a suit being brought by a shareholder against a decision of the corporation's general assembly. But he did not consider these problems to be an obstacle to arbitration. He transferred the legal scheme of the judgement of a state court, which is binding for all shareholders, into the arbitration clause that is contained in the articles of association of a company. His principal argument was the *equality of arbitral tribunals and state courts*. Mr Raeschke-Kessler concluded that the majority of the shareholders should even be sufficient to insert an arbitration clause into the articles of association. This last point was ardently debated in the ensuing discussion along with, and inseparable of a basic assessment of the advantages and disadvantages of arbitration in this context.

Then, Herbert Kronke presented an outline of the *Center* and its conception, putting particular emphasis on the integration of practitioners into legal education. Accordingly, Professor Kronke proposed to organize summer courses in arbitration with the participation of lawyers. Furthermore, the *Willem C. Vis International Commercial Arbitration Moot Team* should be supervised by the *Center* which could help crossing the channel between academic education and practical experience. Professor Kronke pointed to the fact that the *Center's* core idea of bringing practitioners and academics together at a round table, was clearly reflected by the members of the advisory board being practitioners: Gustav Duden (*Partner* with the law firm of *Rowedder, Zimmermann, Haß* in Mannheim), Professor Wulf Goette (Judge of the German Federal Court of Justice – *Bundesgerichtshof - BGH*, Karlsruhe), Professor Carl Otto Lenz (*Partner* with the law firm *Baker & McKenzie*, Brussels, and formerly Advocate General at the European Court of Justice -ECJ), Julia Rakob (*Junior Partner* with *Linklaters Oppenhoff & Rädler*, Frankfurt/Main), Hilmar Raeschke-Kessler (Attorney at the German Federal Court of Justice, Karlsruhe) as well as Anne-Marie Whitesell (Secretary General of the ICC International Court of Arbitration, Paris).

A further highlight of the day's proceedings was set by the just mentioned Anne-Marie Whitesell who gave a conference about 'International Commercial Arbitration and Legal Education'. She illustrated the increasing importance of arbitration: In the last ten years the number of ICC-cases per year had risen by 70% and the geographic spread was continually expanding. Last year, more than 590 cases had come before the ICC International Court of Arbitration involving parties from more than 100 and arbitrators from more than 60 different countries. As to the origin of

the parties, Germany was third behind the USA and France. In the light of these developments, Anne-Marie Whitesell underlined the importance of German initiatives such as the Heidelberg *Center* for International Dispute Resolution in order to follow and respond to the different evolutions in the area of arbitration. One important aspect resulting from the increasing number of international arbitral proceedings would be the students' need to know this subject and to learn how to think *transnational*.

In the final discussion, Herbert Kronke invited the audience to present their ideas about the future work of the *Center*. Professor Jochen Abr. Frowein proposed to take into consideration interstate arbitration and arbitration between states and privates as well in order to overcome the separation between private and public law that would be nowhere else as clear-cut as in Germany. Queen's Counsel Arthur L. Marriott (*Debevoise & Plimpton*, London) representing the London Court of International Arbitration congratulated Herbert Kronke and Thomas Pfeiffer on their project and proposed an approach of provocation and challenge: the provocation should make people think and the challenge would lay in the development of an appropriate reaction to the clash of legal cultures in the area of arbitration.

Herbert Kronke and Thomas Pfeiffer closed the conference expressing their hope that the *Center* would become a vehicle for bringing more practical experience into legal research and university education.

A first step on this way will be made on Tuesday, 10 June 2003, when the Heidelberg *Center* for International Dispute Resolution will organize the presentation of the PRINCIPLES OF TRANSNATIONAL CIVIL PROCEDURE drafted by UNIDROIT and the American Law Institute.

For further information contact center@ipr.uni-heidelberg.de or visit the website of the *Center* at <http://www.ipr.uni-heidelberg.de/center>