

## **International Association of Judges 52<sup>nd</sup> Meeting: Marrakech, October 11-15, 2009**

### **Report to the Central Council of the Second Study Commission**

The topic of the Second Study Commission's deliberations this year was: "The Treatment of Commercial Cases."

The members dealt with this subject by reviewing, responding to, and discussing a lengthy series of questions, together with a case study, circulated in a Questionnaire. In general terms, the questions dealt with such matters as (a) the legal and statutory framework underlying commercial law in the various countries, (b) the ways in which member countries organized their courts to deal with commercial matters, (c) special processes and procedures for expediting and enhancing the treatment of commercial cases, and (d) ways of handling international, cross-border disputes. Responses were received from 30 national Associations prior to the Conference.

For purposes of this Report to Central Council, we have reduced our deliberations to four principal conclusions and recommendations, namely:

- 1) Most civil law countries have a Commercial Code that supplements the Civil Code. In the United States, the various states have adopted a Uniform Commercial Code. Both common law and civil law countries have specific statutes that address particular subject matters within the commercial law realm (e.g., legislation respecting insolvency/bankruptcy, competition, corporations, intellectual property).
- 2) The ways in which countries structure their courts to deal with commercial matters fall into three general categories:
  - a) In some countries commercial cases are not separated at all from other civil matters;
  - b) In others, formal specialist commercial courts, presided over by specialist judges have been established;
  - c) The third group falls between (a) and (b). Informal commercial divisions have been set up within the general court framework. Like the specialist commercial courts, these courts are presided over by judges experienced in dealing with commercial matters.

From these starting points, we make the following observations and recommendations with respect to international cross-border disputes and domestic commercial disputes:

3) None of the countries reporting had special courts to deal with international commercial disputes. However, domestic commercial tribunals are more and more frequently called upon to deal with such matters. We therefore underline the importance of domestic courts developing a system for treating international commercial cases in a timely, predictable and effective manner, including by

- a) developing the expertise and experience in their judiciaries for that purpose;
- b) putting in place processes – including language facilities – to expedite and enhance the way in which such disputes are resolved; and
- c) encouraging comity in practices and procedures respecting the recognition and enforcement of judgments of other nations.

In this way, both foreign and domestic investors and business enterprises will have confidence in the stability and effectiveness of the domestic tribunal in dealing with international commercial disputes.

4) We also emphasize that the foregoing recommendations apply to domestic commercial tribunals dealing with domestic commercial disputes.

In addition, the Second Study Commission adopted the Summary of Responses prepared and circulated in advance of the Conference – and the Addendum to that Summary – both of which are posted on the IAJ’s website.

The topic chosen for the Second Study Commission’s deliberations next year is: “Civil Issues Respecting the Protection of Privacy (with Particular Focus on Such Matters as Affected by the Internet).”

Finally, I would like to thank the Vice-Chairs, Carole Besch of Luxembourg and Zila Zfat of Israel, for their assistance and support in facilitating the work of the Commission.

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Canada  
Chair, Second Study Commission