

INTERNATIONAL
ARBITRATION and
INTERNATIONAL
COMMERCIAL LAW:
*Synergy, Convergence
and Evolution*

LIBER AMICORUM ERIC BERGSTEN

EDITED BY S. KRÖLL, L.A. MISTELIS,
P. PERALES VISCASILLAS & V. ROGERS

Liber Amicorum Eric Bergsten

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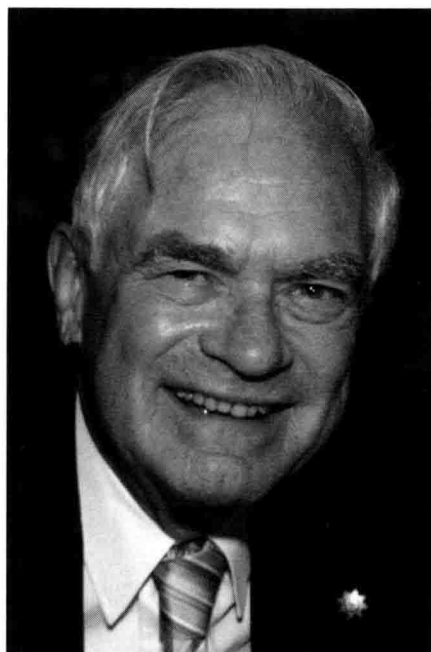
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**INTERNATIONAL ARBITRATION AND
INTERNATIONAL COMMERCIAL LAW**



Eric S. Bergsten

PREFACE

This collection of essays is an offer of friends to Eric Bergsten on the occasion of his 80th birthday. It celebrates the long-standing and sustained contribution Eric Bergsten has made to the world in international commercial law, international arbitration and legal education. Many more people wanted to contribute but the time frame set for the production of this volume was rather tight. There was overwhelming response from so many people who wanted to find a way to honour Eric.

We have organised the 45 contributions in three parts: the first part contains contributions dealing with international sales law and international commercial law; the second part concentrates on papers concerning international commercial and investment arbitration; while the third part is dedicated to chapters on legal education.

Eric Bergsten has had a distinguished career as an international civil servant, predominately with the United Nations where he served for sixteen years; for six of these years he was Chief of the International Trade Law Branch of the Office of Legal Affairs, the Secretariat of UNCITRAL (the United Nations Commission on International Trade Law). He has also been a law professor for more than fifteen years. He embodies all the qualities that have to do with excellence in his professions: intellect, integrity, an inquisitive nature, eye for detail, precision, modesty, altruism and commitment to public service.

Eric's lasting legacy, however, is the Willem C Vis International Commercial Arbitration Moot which has dominated his professional life, but at the same time provided the forum for a life changing experience for so many young lawyers from all over the world. The Vis Moot is not the oldest in the world, but it is certainly one of the most famous and arguably the most accessible international moot as it allows any participating team to make it to the final rounds held in Vienna every year, the week before Easter.

For Eric the Moot is a teaching tool; it teaches participants the subject matter (international sales law and international commercial arbitration), but it is also a first hand experience of professional life for students as well as a superb social and professional networking opportunity. The Moot is Eric's current main activity for a good part of the year and in the weeks the Moot takes place it is the main occupation of his entire Vienna family.

As a matter of fact, all four of us have met Eric at the moot some twelve or thirteen years ago and we have built up an enduring friendship. Eric has been a mentor and a good friend to all of us at various stages of our careers and this *Liber Amicorum* is merely a modest token of our appreciation to him and our gratitude for all he has done and continues to do, not only for us, but also for so many other people who may not really know directly.

We owe a number of debts. First, to our authors: this book could not have been published without the generosity of the contributors who enthusiastically gave their time to prepare their contributions; it is also great that the project has been kept a secret for such a long period! Second, to Brigitta Bergsten and Patrizia Netal, Eric's immediate family, who have provided support and inside information where needed: as a matter of fact they both support the moot as well in many ways and Patrizia has been its principal administrator for the last few years. Third to John Ribeiro and Frank Sponheimer who have assisted with the co-ordination and technical editing of this *Liber Amicorum*.

As always, it has been a pleasure to work with Kluwer Law International. Our publishers, Eleanor Taylor and Vincent Verschoor, have shown enthusiasm and support for this project and ensured its delivery on time for the opening of the 18th Willem C Vis International Arbitration Moot.

SK, LM, PPV, VR

Cologne, London, Madrid, New York & Vienna
1 February 2011

PROFESSOR DR ERIC E. BERGSTEN

Professor Eric E. Bergsten was born in 1931 in the United States to parents of Swedish origin. He was educated mainly in the United States and also studied for a year in France (Aix-en-Provence), obtained a B.S. from Northwestern University in 1953, a J.D. from the University of Michigan in 1956, an M.A. from Georgetown University in 1960, an M.Comp.L. degree from the University of University of Chicago in 1961 and finally his doctorate, D.Comp.L., again from the University of Chicago in 1972.

He has had a distinguished sixteen-year career with the United Nations where he served the United Nations Commission on International Trade Law (UNCITRAL), first as Senior Legal Officer (1979-1985) and then as Secretary of the Commission. From 1985-1991 he was Chief of the International Trade Law Branch of the Office of Legal Affairs. This branch serves as secretariat of UNCITRAL. With his work in the United Nations he moved to Vienna in 1979 and since then he has kept a residence there. After his retirement he made Vienna his home.

During his fifteen years of law school teaching, he taught a number of commercial law and international law courses at Fordham University (1991-1992), the University of Iowa (1961-1974), and Northwestern University (1964-1965). He became a Professor at Pace University School of Law in 1992 and since 1999 he is an Emeritus Professor of the same University. He has also been a Consultant with UNCTAD for their International Dispute Resolution Project, 2003.

His numerous writings and teaching focus on commercial law and international trade law. In addition to his well-known general editorship of *International Commercial Arbitration* (Oxford University Press, New York) he has written the monograph *Community Law in the French Courts: The Law of Treaties in Modern Attire* (Martinus Nijhoff, The Hague). His most recent work focused on UNCITRAL Work, the UNCITRAL Model Law on International Credit

Transfers, the UNCITRAL Convention on International Independent Guarantees and Stand-by Letters of Credit, and last but not least the United Nations International Convention on Contracts for the International Sale of Goods (CISG) for which during his time at UNCITRAL he wrote the Secretariat Commentary. He has also written extensively on the Contribution of Law Schools and their Professors to the Promotion of Integration and Commerce as well as Legal Education, in general, and the merits of moot courts, more specifically.

Most importantly, Professor Bergsten developed and has administered the Willem C. Vis International Commercial Arbitration Moot held annually in Vienna, Austria since 1993. This Moot has grown beyond any expectation and currently attracts more than 260 law schools from 66 countries, a truly unique international educational and professional venture of the highest possible calibre attracting close to 2000 people to Vienna every year!

Eric Bergsten is also the Current Chairman of the CISG-Advisory Council, a private initiative which aims at promoting a uniform interpretation of the CISG. It is a private initiative in the sense that its members do not represent countries or legal cultures, but they are scholars who look beyond the cooking pot for ideas and for a more profound understanding of issues relating to CISG. Opinions of the CISG-AC are now being cited not only by scholars but also international arbitral tribunals and national courts.

Professor Bergsten has been awarded a 'Special Award' by the International Law and Practice Section of the New York State Bar Association, a 'Special Commendation' for his achievements as Director of the Willem C. Vis International Commercial Arbitration Moot by the Section on Dispute Resolution of the American Bar Association, and the Silver Medal of Honour by the City of Vienna, Austria.

He has travelled and continues to travel around the world to promote the harmonisation of international commercial law and international arbitration.

We wish him longevity and good life!

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