



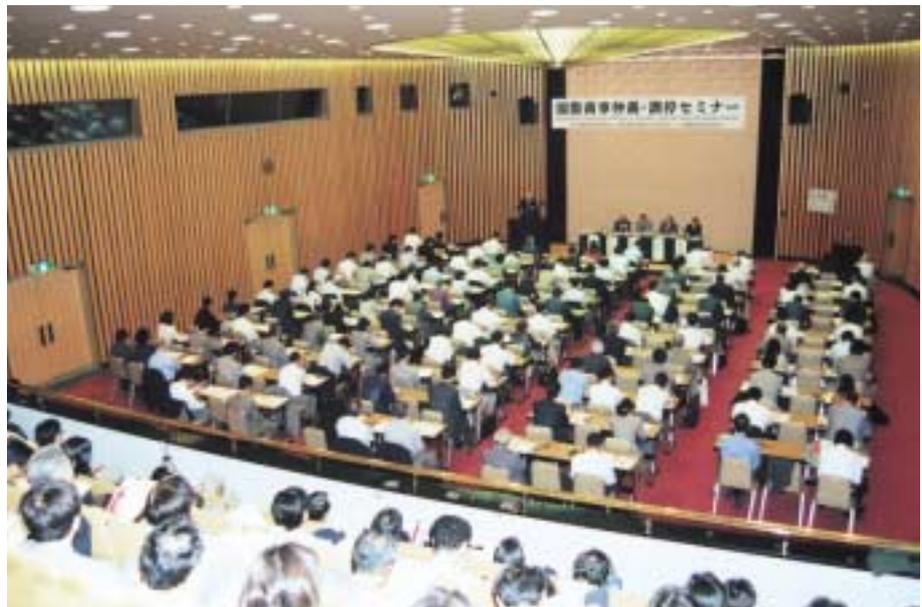
Joint ADR Seminar Held in Tokyo

On June 1, 2001, the “International Commercial Arbitration / Conciliation Seminar” was held in Tokyo under the joint auspices of the ICC Japan (ICCJ), The Japanese Institute of International Business Law, Inc. (IBL), and The Japan Commercial Arbitration Association (JCAA).

The purpose of the seminar was to promote the wider use of arbitration and other means of ADR in Japan, where arbitration has yet to gain widespread acceptance as a means of dispute resolution. JCAA and other arbitration institutions in Japan have been working on various promotional activities for ADR, and the seminar represented the first opportunity for the three organizations, ICCJ, IBL and JCAA, jointly to hold an event of this kind.

There were four panelists, each with a distinguished career in international commercial arbitration: Dr. Robert Briner (Switzerland)ⁱ, Mr. Toshio Sawada (Japan)ⁱⁱ, Mr. Yukukazu Hanamizu (Japan)ⁱⁱⁱ and Mr. Richard Eastman (U.S.A.)^{iv}. Over 200 people, including lawyers, academics, government officials and business people attended the seminar.

The seminar began with an opening address given by Mr. Norihiko Maeda, President of JCAA, and an introduction of each of the panelists. Dr.



Briner then gave a presentation on “The Growth of Arbitration in Western Europe”, which provided the audience with a highly informative explanation as to how arbitration developed in Western European countries. He noted the importance of cooperation among arbitration organizations throughout the world to serve the business community in resolving international business disputes. The use of arbitration, he said, has steadily grown not only in Western Europe but also in every region in the world, closely linked to the development of international commerce. As a key factor in the development of arbitration in Western Europe, Dr. Briner stressed that the success of the arbitral community was possible with the support of business community, academics, judiciaries, and legislators, all cognizant of the great advantage of arbitration over court proceedings. He also pointed out the achievements in

the world community to promote arbitration, such as the adoption of the New York Convention and the UNCITRAL Model Law.

Mr. Sawada was the next speaker, who followed with a presentation on the subject of "Arbitration and Conciliation", in which he discussed recent adoption of the ICC ADR Rules (the "New Rules"). He also noted that a hybrid of mediation/conciliation has come to be used increasingly worldwide as people begin to see it as a quicker and more constructive means of resolving disputes than arbitration. Mr. Sawada noted that the New Rules are most timely in that they allow various options in dispute resolution. To describe the hybrid process (med-arb) in Japanese, Mr. Sawada recommended use of the word, *CHO-CHU*, taking the first Chinese characters from each of mediation and arbitration. Mr. Sawada pointed out that the ICC International Court of Arbitration recognizes med-arb (*CHO-CHU*) as one of the ADR options although the New Rules were prepared in the more conventional and conservative form.

A panel discussion chaired by Mr. Maeda followed. Mr. Hanamizu and Mr. Eastman first provided their views on the presentation. Mr. Hanamizu agreed with Mr. Sawada that the New Rules are timely, but pointed out the necessity for further consideration of what kind of international commercial dispute is suitable for resolution by mediation/ conciliation. Mr. Eastman stressed the

necessity of improving Japan's mechanisms for arbitration, including, for example, the amendment of the Japan's arbitration law, and also increasing the number of arbitrators. The discussion was enlivened by numerous keen questions from the audience and there was an animated exchange of opinions between the floor and the panelists, centered on the most effective use of arbitration and mediation/conciliation in resolving international commercial disputes.

Mr. Maeda then drew the seminar to a close with a few remarks stressing the importance of interest and wider support in the promotion of arbitration and other ADR in Japan.

The seminar was highly successful, and JCAA would like to express appreciation to ICCJ and IBL, whose cooperation and support made the event possible.

- i Chairman, ICC International Court of Arbitration; Partner, Lenz and Staehelin, Geneva; Doctor of Law, University of Zurich
- ii Vice Chairman, ICC International Court of Arbitration; Professor Emeritus of Sophia University; Chairman of the Japanese Council on International Transactions, Senior Advisor to JCAA
- iii Partner, Yuasa and Hara
- iv Japan Resident Partner, Holland & Knight LLP 

Mr. Yamaguchi Elected as New Chairman

On May 25, 2001, Mr. Nobuo Yamaguchi succeeded Mr. Kosaku Inaba as JCAA's seventh chairman. Like his predecessors, he also serves as chairman of the Japan Chamber of Commerce and Industry (JCCI). His election at JCCI took place on July 24.

JCAA was born as one of JCCI's committees in 1950 and it has maintained a close working relationship with JCCI since it became a legal person in 1953.

At the JCAA Board Meeting Mr. Yamaguchi emphasized the importance of untiring ADR awareness raising activity focused on dispute avoiding business people of Japan. 

IFCAI EVENTS

The International Federation of Commercial Arbitration Institutions (IFCAI) held its 11th General Meeting and its 6th Biennial Dispute Resolution Conference on June 21 and 22, 2001 in Prague. Norihiko Maeda, JCAA president, participated in them.

The General Meeting was a housekeeping type meeting. Mr. Michael F. Hoellering of AAA who had been the IFCAI president for 13 years since its establishment stepped down and Mr. Ulf Franke, Secretary General of the Arbitration Institute of the Stockholm Chamber of Commerce was elected new president. There were also changes in the officers and councillors. The Arbitration and Mediation Center of the National Chamber of Commerce of Mexico City was approved to become a member. The next meeting will be held in Bahrain in 2003.

Next day the Biennial Dispute Resolution Conference was held. Hosted by the Arbitration Court attached to the Economic Chamber of the Czech Republic and the Agricultural Chamber of the Czech Republic, the focus was on Arbitration in Central Europe and Arbitration involving Russian, CIS and East-European parties. The agenda

also included ICSID and Investment Treaties, Sports Law Arbitration, On-Line Dispute Prevention and Resolution and Current UNCITRAL Arbitration Work. Mr. Jernej Seclek, new UNCITRAL Secretary solicited IFCAI members' comments and suggestions to UNCITRAL activities in general and to the UNCITRAL Mediation Rule in particular. ■



Left to Right : Mr. Alan Uzelac, Secretary General of Permanent Arbitration Court at the Croatian Chamber of Commerce, Mr. Norihiko Maeda, President of JCAA and Mr. Jernej Seclek, Secretary of UNCITRAL

International ADR Seminar Held at Canadian Embassy in Tokyo

JCAA held an International ADR seminar on April 19, 2001 at the Canadian Embassy in Tokyo under the auspices of the Canadian Embassy with the co-operation and support of the British Columbia International Commercial Arbitration Centre (BCICAC), with whom JCAA concluded an agreement in 1988.

The seminar was held for the purpose of explaining ADR as an effective means of dispute resolution as well as introducing recent developments in ADR. After an opening address by Mr. Peter G. Campbell, Minister of the Canadian Embassy, Mr. Jim Anholt, Representative of the

British Columbia Trade and Investment Office in Tokyo, gave an explanation about BCICAC.

Under the themes of " Litigation and Arbitration Merits and Demerits "; and " New Movements in ADR More Flexible Solutions "; three guest speakers with great knowledge and experience in international and domestic litigation and arbitration presented their views. The speakers were: Mr. Toshio Sawada, Attorney at Law and Vice Chairman of ICC International Court of Arbitration; Mr. Masatami Otsuka, Partner, J & D Law Offices, and Attorney and Counselor at Law in Japan and New York; and Mr. Haig Oghigian, F.C.I.Arb., Attorney and Counselor at Law to Jones, Day, Reavis & Pogue and Barrister and Solicitor in British Columbia. Following the

speeches, discussion was held on several questions from participants about the practice of international arbitration and mediation.

The seminar was a great success, thanks to mutual cooperation between the Canadian and Japanese sides. JCAA hopes that such cooperative action for the promotion of ADR among international arbitral institutions will continue in the future. 

Proposed Legal Reform Urges Government's Bold Action

The Judicial Reform Council in June 12, 2000 submitted its final report on legal reform to Prime Minister Junichiro Koizumi. The report calls for the improvement of legal systems, the expansion of judicial personnel, and the establishment of public participation in the judicial system.

The Judicial Reform Council was inaugurated in July 1999 for a two-year term and consists of 13 representatives from the judiciary, academia, business, consumers groups, and labor. It is chaired by Koji Sato, Professor of Law at Kinki University.

Subtitled "For a Justice System to Support Japan in the 21st Century" the 118-page report calls for a variety of policies to effectively build a new legal system capable of meeting the requirements of the new age of internationalization and deregulation, which places a great burden on the current legal system.

To improve legal services and legal systems, the council suggested that the government should do the following, among other things: consider ways for nonjudicial professionals to participate in trials involving technical knowledge in order to provide judges with assistance; halve the duration of civil court hearings; lower the fee involved in filing suits; consider whether to establish a law to effectively carry out administrative litigation; and speed up criminal trials by enabling courts to establish the point of a dispute at an earlier date and concentrate on the same case on consecutive

days.

In addition to the above suggestions, the council urged that the efforts to reinforce and vitalize ADR should be made so that it will become an equally attractive option to adjudication for the people. It went so far as to give examples of specific measures that could be taken, such as establishing an infrastructure for ADR, providing more information on ADR and developing human resources for ADR.

To expand the number of legal professionals, the council seeks in particular to launch U.S.-style law schools nationwide from April 2004 and to introduce a new national bar exam in 2006 for law school graduates, before phasing out the current bar exam in 2010. The purpose is to increase the number of those who pass the bar exam annually from 1000 to 3000 in 2010 so that the number of legal professionals will have increased by 2018 from the current 20,000 to 50,000.

To promote public participation in judicial procedures, the council seeks to introduce a quasi-jury system whereby a jury randomly selected from registered voters would hear a case and come to a verdict with the consultation of judges.

Koji Sato, chairman of the council, commented that the proposals represent just the beginning. On receiving the report, Koizumi expressed his Cabinet's determination to do its utmost to realize the proposed changes. "Judicial reform", he said, "is essential to promote the structural reform of society and the economy. We should consider it as part of our national strategy."

Koizumi's Cabinet launched The Judicial Reform Preliminary Office (*Shihouseido Kaikaku Suishin Junbishitsu*) in July 1, 2001 in order to work towards achieving the changes proposed in the report submitted by the council. The committee will be divided into eight groups, covering areas such as ADR Basic Law, an appropriate legal scheme for arbitration, judicial reform promotion law, legal training and law schools, and the quasi-jury system. The government intends to introduce bills related to the report within three years. 

APEC ADR EEP 2000 Mexico Seminar

APEC Alternative Dispute Resolution Executive Education Project 2000 (APEC ADR EEP 2000) had its second seminar in Mexico City on June 26, 2001 in conjunction with the 23rd APEC Human Resources Development Working Group Meeting.

Norihiko Maeda, JCAA President and the APEC ADR EEP 2000 Project Overseer, made the opening remarks and one of the presentations as well.

Thanks to the effort made by Mr. Carlos Rodriguez, APEC Expert from Mexico, this seminar was cosponsored by APEC, the Mexican Ministry of Economy, the Mexican Arbitration Center, the Mexican Mediation Institute, Mexican Autonomous Institute of Technology in addition to the Institute of International Studies and Training and JCAA from Japan. APEC Experts from Canada, Chile, Japan, Korea and Singapore joined distinguished Mexican speakers at the seminar. They also had short workshops before and after the seminar.

More than a hundred business executives, lawyers and professors participated in the seminar. The next JCA Newsletter will carry a more detailed report on this matter. 

JCAA President visited Seoul

On June 5 and 7, 2001, Mr. Norihiko Maeda, President of JCAA visited The Korean Commercial Arbitration Board (KCAB) and exchanged information and views with Mr. Jong-Hee Kim, President of KCAB. Mr. Maeda also met Mr. Soonwoo Lee, former President of KCAB, who kindly joined the APEC ADR EEP 2000 Mexico Seminar as the APEC Expert for Korea later in June. 

Recommended Arbitration Clause

In drawing up contracts, parties are recommended to include the following arbitration clause:

“ All disputes, controversies or differences which may arise between the parties hereto, out of or in relation to or in connection with this Agreement shall be finally settled by arbitration in (name of city), Japan in accordance with the Commercial Arbitration Rules of The Japan Commercial Arbitration Association. The award rendered by the arbitrator(s) shall be final and binding upon the parties hereto.”

Mr. Toshio Sawada, Senior Advisor to JCAA visits CIETAC and KCAB

On March 26, 2001, Mr. Toshio Sawada, Attorney at Law in Tokyo and Senior Advisor to JCAA, visited the China International Economic and Trade Arbitration Commission (CIETAC) in Beijing. On the following March 27 and 28, he visited the Korean Commercial Arbitration Board (KCAB) in Seoul, accompanied by Mr. Masaharu Onuki, General Manager of JCAA Osaka Office.

During the meeting on March 26 at the office of CIETAC, Mr. Sawada met with CIETAC Vice Head Zhao Jian as well as CIETAC Vice Chiefs Wan Shen Chang and Li Yong. Mr. Sawada discussed promoting ADR-related activities in CIETAC and learned that CIETAC has engaged in various promotional activities, such as meeting with legislature committees, including a committee of the National People's Congress, as well as meeting with a court judge except the first trial.

During the meeting on March 27 and 28, Mr. Sawada and Mr. Onuki met with KCAB President Jong-Hee Kim to exchange opinions and information on ADR promotional activities in APEC areas including the Republic of Korea. They obtained explanation from KCAB's staff on activities in the area of arbitration and mediation as well as on education programs for promoting ADR. 

Mock Arbitration Being Prepared

The Japan Commercial Arbitration Association (JCAA) will hold a mock international arbitration this November in Tokyo and Osaka, under the joint auspices of other ADR related organizations in Japan including the Japan Federation of Bar Associations.

Every year JCAA holds an International Commercial Arbitration Forum to promote commercial arbitration in Japan. In 1999, the forum focused on the role of the arbitrator in international commercial arbitration. Last year, the main themes were recent noteworthy issues in international commercial arbitration and the arbitrator's rights and duties. This year, the idea is to present audiences with a concrete picture of arbitration: the mock arbitration is now being prepared by

members of a network organization sub-committee comprised of, among others, existing arbitration institutions in Japan (for the network organization and its background, see Newsletter No. 5).

Featuring international commercial disputes, this mock arbitration will be the first of its kind to be held in Japan. The main purpose is to present a general overview of the arbitration process as well as important issues that differentiate arbitration from litigation to audiences who are probably unfamiliar with the very concept of arbitration. It will not take the form of a competition about case management held among groups of law students or arbitration professionals as has often been seen in foreign countries.

Details of the mock arbitration are being finalized, and will be reported in following JCA Newsletters. 

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