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INTER-AMERICAN COMMERCIAL ARBITRATION

MARTIN DOMKE *

Commercial arbitration has long been recognized in Latin America as a successful method of settling controversies which arise both in domestic and foreign trade. This is the spirit of amicable settlement which also prevailed in the political practice of the Western Hemisphere where various methods of adjustment of controversies by mediation, conciliation and arbitration have been developed over the last hundred years.¹ Among the more recent examples may be mentioned the American Treaty on Pacific Settlement, the Pact of Bogota, of April 30, 1948,² and, for a bilateral agreement, the Treaty of Friendship, Commerce and Economic Development between the United States and Uruguay of November 23, 1949, which provides in Article XXIII that any dispute as to the interpretation or application of the Treaty "not satisfactorily adjusted by diplomacy, shall be submitted to the International Court of Justice, unless the Parties agree to settlement by some other pacific means."³

The movement for the settling of trade disputes by the amicable means of commercial arbitration is of long standing in the Western Hemisphere. Arbitration agreements have developed between Chambers of Commerce in various countries such as that of the Argentine Chamber of Commerce in Buenos Aires and the United States Chamber of Commerce of 1916.⁴ Inter-American business organizations recommended time and again the increased use of commercial arbitration. Suffice it to mention the recommendation of the First Conference of Commissions on Inter-American Developments, of May 1, 1944⁵ that "the American nations submit to arbiters the controversies which may arise between businessmen of those nations, for the purpose of finding a rapid and easy solution of such con-

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1. See Kunz, *International Arbitration in Pan American Developments*, 27 *TEXAS L. REV.* 182 (1948).

2. Kunz, *The Pact of Bogota*, 3 *ARB. J. (N.S.)* 147 (1948); Sohn, *Pacific Settlement of Disputes in the Americas*, 34 *A.B.A.J.* 800 (1948).

3. It is the first commercial treaty recognizing modern economic and commercial relations which was signed by the United States with a South American country in this century. See 21, *DEPT STATE BULL.* 866a (December 5, 1949). For a further example, see the Commercial Treaty between Ecuador and Chile, of August 4, 1949, *infra* note 17.

4. Reprinted in *INTERNATIONAL YEARBOOK ON CIVIL AND COMMERCIAL ARBITRATION* 291 (1928).

5. *PROCEEDINGS OF THE CONFERENCE OF COMMISSIONS OF INTER-AMERICAN DEVELOPMENT* 20 (New York, 1944) Resolution XXXVII.

troveries," which recommendation was also adopted by the Inter-American Conference on Problems of War and Peace, held in Mexico City, in March 1945.⁶ There may further be mentioned the resolutions of the Inter-American Council of Commerce and Production which reiterated in 1944 "its approval of the principle of commercial arbitration in the adjustment of Inter-American controversies"⁷ and which, at its recent conference in Santos, Brazil, in April 1950, renewed its support for an increased use of Inter-American commercial arbitration facilities.⁸ In order to promote the use of commercial arbitration, the Inter-American Council is actually conducting through its National Committees a survey of the practice of commercial arbitration in the various Latin-American countries, the results of which will become a most valuable source for further research in the status and development of commercial arbitration.

Recommendations for the use of commercial arbitration facilities were not, however, confined to business interests in the Latin-American countries. Governments themselves, in the interest of amicable relations between the trade groups of the different countries, favored the promotion of Inter-American commercial arbitration. After the Pan-American Financial Conference in 1915 had first discussed the creation of a system for the settlement of disputes in trade relations of the respective nationals, the Fifth International Conference of American States in 1923 adopted a resolution that Chambers of Commerce encourage the establishment of facilities for the solution of differences between merchants and manufacturers of the various Republics.⁹ The Sixth International Conference held in Havana in 1928 further suggested that the Inter-American High Commission study the principles of arbitration as a means of solving these differences.¹⁰ This question was considered, at the Fourth Pan-American Commercial Conference in 1931, a matter requiring united action by the American Republics. The Conference adopted a resolution for an inquiry and report on the use of arbitration in the settlement of trade disputes to be conducted by the Pan-American Union.¹¹ This inquiry, made in collaboration with the

6. PAN AMERICAN UNION, CONGRESS AND CONFERENCE SERIES, No. 27 at 50 (1945).

7. POLICIES ADOPTED BY THE SECOND PLENARY MEETING OF THE PERMANENT COUNCIL OF AMERICAN ASSOCIATIONS OF COMMERCE AND PRODUCTION 21 (1944).

8. See also *Arbitraje comercial*, pamphlet of the Inter-American Council (1947).

9. See KELLOR, AMERICAN ARBITRATION. ITS HISTORY, FUNCTIONS AND ACHIEVEMENTS: XVII (1948).

10. See VITA, *Comparative Study of American Legislation Governing Commercial Arbitration*, INTER-AMERICAN HIGH COMMISSION UNITED STATES SECTION (1928).

11. Resolution XVII: "To request the Pan American Union to have a thorough inquiry made as to the possibilities of the commercial interests of the American Republics joining with the commercial interests of other countries in the support and active use of a system of arbitration to be utilized in disputes in trade between all countries, with a maximum of efficiency and expedition and avoidance of duplication, and to distribute its report on the results of such inquiry, together with a concrete questionnaire regarding

American Arbitration Association, was the basis of a comprehensive report which the Pan-American Union submitted to the Seventh International Conference of American States held in Montevideo in 1933.¹² The report, for which comments and suggestions were received from most of the Latin-American States, pointed to the diversity of arbitration laws and practice in the various Republics. Some new agency seemed to be necessary to undertake the development and administration of Inter-American commercial arbitration in order to pursue the movement for unification through standard rules and procedures.

The Seventh International Conference of American States adopted the Resolution XLI which is the basis of the present Inter-American Commercial Arbitration System: "That with a view to establishing even closer relations among the Commercial Associations of the Americas, entirely independent of official control, an Inter-American Commercial Agency be appointed in order to represent the commercial interests of all Republics, and to assume, as one of its most important functions, the responsibility of establishing an Inter-American system of arbitration." This Resolution authorized the establishment of a system of arbitration independent of official control and representing the commercial, and not the political, interests of the American Republics. Thereafter, the Pan-American Union authorized the American Arbitration Association and the Council on Inter-American Relations¹³ to undertake the organization of such system, which was completed in 1934 by the creation of the Inter-American Commercial Arbitration Commission with headquarters in New York. Through cooperation with commercial organizations in each republic, the Commission appointed National Committees and established panels of arbitrators in each of the American Republics. Advisory Committees were also constituted and educational facilities were organized to make known the purpose and facilities of the Commission.

The first report was submitted to the Eighth International Conference of American States held in Lima, Peru in 1938.¹⁴ In 1940 the Commission considered it necessary to follow more closely the pattern set in political controversies by the Pan-American Union, namely to provide for the adjustment of claims and grievances outside of formal arbitration proceedings.

the various aspects of the subject, to all American Republics for their consideration and suggestions for its practical development."

12. *Commercial Arbitration in the American Republics*, in DOCUMENTS FOR THE USE OF DELEGATES TO THE SEVENTH INTERNATIONAL CONFERENCE OF AMERICAN STATES, No. 2 (Pan American Union, Washington, 1933).

13. The Council on Inter-American Relations having been dissolved in 1936, the American Arbitration Association continued its sponsorship of the work of the Commission.

14. Under topic 23 of the programme "Consideration of the Results of Inter-American Conferences held since the Seventh International Conference of American States" (Washington, 1938).

In order to facilitate such adjustments, the commission created a Business Relations Committee,¹⁵ for the settlement of differences that do not require formal arbitration. These adjustment proceedings and arbitrations are increasingly used pursuant to the many arrangements which the Commission maintains with Chambers of Commerce in the different American Republics: through these national commercial agencies disputes are often expeditiously cleared for adjustment and settlement.

The Annual Reports of the Commission of 1948 and 1949¹⁶ gave a detailed survey of the case material and the adjustment services of the Commission in its work of settling disputes which arise out of trade operations between businessmen of twenty-one American Republics. The arbitration activities of the Commission and of its National Committees are greatly facilitated through the adoption of a standard arbitration clause as follows:

Any controversy or claim arising out of or relating to this contract or the breach thereof, shall be settled by arbitration, in accordance with the Rules, then obtaining, of the Inter-American Commercial Arbitration Commission. This agreement shall be enforceable and judgment upon any award rendered by all or a majority of the arbitrators may be entered in any court having jurisdiction. The arbitration shall be held in . . . or wherever jurisdiction may be obtained over the parties.¹⁷

Disputes submitted most frequently to the Commission comprised failure to ship or deliver commodities, delay in delivery and payment, merchandise not in accordance with specifications, change in terms of contract, interpretation of agency contracts and shipping terms, damage of merchandise in transit, partnership or other joint venture questions, and claims of principals against representatives and of agents against principals. An increasingly complex international trade situation is reflected in cases which relate to U.S. dollar scarcity and consequent currency restrictions, the shift towards a buyers' market in many commodities, resistance of foreign buyers to irrevocable letters of credit or sight draft payment transactions, and many other factors of foreign exchange control and custom procedure.

15. See *Report of the Inter-American Commercial Arbitration Commission 1938-1947*, submitted to the Ninth International Conference of American States in Bogota, Colombia (1947).

16. Available at request from the Commission (9 Rockefeller Plaza, New York, N.Y.) where also the Rules (in English, Spanish and Portuguese) and further material on the activities of the Commission may be obtained.

17. To these Rules refers the Commercial Treaty between Ecuador and Chile, of August 4, 1949, when it confers in art. XIV (c) upon the Joint Permanent Ecuadorian-Chilean Commission the function to "prescribe the standards necessary for the application of arbitration, so that the problems which arise between the two countries in their commercial relations might be resolved, observing, insofar as possible, the rules prescribed by the Inter-American Commercial Arbitration Commission in accordance with Resolution XLI of the Seventh International Conference of American States held in Montevideo in 1933."

The majority of the cases which were submitted to the Commission by firms in nearly all twenty-one American Republics, were adjusted by means of negotiated settlements through the good offices of the Commission and its Business Relations Committee. The result was accomplished largely by correspondence without oral hearings, rather than by formal arbitration procedure, since the submission of evidence, the appearance of parties and witnesses, and the production of documents is sometimes delaying and expensive. A number of cases submitted to the Commission were settled on the submission of questions of fact. Once the facts were resolved, the terms of the settlement were determined by the parties. In such instances these terms rarely appear in the records of the Commission.¹⁸

It is interesting to note that more recently an attempt was made by the Government of Ecuador to overcome some of the difficulties encountered in foreign trade. By a decree of Dec. 14, 1948,¹⁹ the settlement of all foreign trade disputes of Ecuadorian importers and exporters was placed under the protection of the Inter-American Commercial Arbitration Commission. This was accomplished by the incorporation of an arbitration clause in all import and exchange permits which are issued by the Banco Central del Ecuador.

It is obvious that the development of commercial arbitration, especially in its international aspects of foreign trade, is only possible under standard clauses and standard procedures. Machinery has to be available for easy access to the parties in disputes, and a fair and impartial proceeding under disinterested administration will guarantee a settlement which the parties accept as the final determination of their controversies. Moreover, a certain uniformity of basic provisions in the statutory arbitration law of the various Latin-American countries becomes indispensable. It is for that reason that the Sixth International Conference of American States which created the Commission in 1933 realized at the same time that the success of a system of commercial arbitration may be impeded by too great a diversity of arbitration laws in the different Latin-American countries. It therefore recommended that all American Republics enact the following standards into their respective laws:

- a. Agreements to arbitrate, whether relating to existing or future controversies to be valid and enforceable, and where enforcement is not provided for by law, trade discipline is to be provided.
- b. Parties to have the power to designate arbitrators and to fill such vacancies or to provide a method therefor.
- c. Proceedings by de facto arbitrators to be more precisely defined by

18. On the number of disputes referred to the Commission and the nationality of parties involved, see *Report of the Inter-American Commercial Arbitration Commission 1938-1947*, *supra* note 15, at 18.

19. Decree No. 468 of December 14, 1948, REGISTRO OFICIAL, NO. 106 at 840 (January 10, 1949) [translated in 3 *ARB. J. (N.S.)* 79 (1949)].

- the parties or organization under whose auspices the arbitration is to be held.
- d. The full impartiality of the arbitrator to be provided for, with the right of a challenge or removal, by the organization under whose auspices the arbitration is being conducted in a manner provided for in the rules or regulations governing the proceedings.
 - e. An uneven number of arbitrators to be provided for under the rules, all of whom are to participate in the proceedings from the beginning.
 - f. Awards in all instances to be unanimous or by majority vote.
 - g. Waiver of the right of appeal to be provided for in the rules, which shall be binding on the parties, and which will limit the ground for appeal to procedural matters and to such questions of law as both parties agree to submit to the court.
 - h. The wider use of discipline by the organization whose members participate in an arbitration and refuse to abide by the award where the law is inadequate to compel performance of the terms of the award.

Commercial arbitration law in the various Latin-American countries is dealt with in numerous statutory provisions which have developed from the Spanish version of the Napoleonic Code. They are embodied in various parts of codes of civil and commercial procedure and in commercial codes.²⁰ Their outstanding feature is that they do not provide for the enforcement of agreements to arbitrate disputes thereafter arising. The foremost recommendation of the 1933 Conference therefore provided among these standards that the countries enact legislation to make agreements to arbitrate future disputes legally valid, and awards issued thereunder enforceable. Legislation is also recommended to safeguard the power of the parties to designate their own arbitrators, to have an uneven number of arbitrators, and to obtain awards by a majority vote. New provisions are the right of challenge and removal of an arbitrator by the organization under whose auspices the arbitration is being held;²¹ and a waiver of appeal that is binding upon the parties, thus assuring the finality of the award.

This Conference of 1933, realizing the delay involved in securing the enactment into law of these recommendations, specifically laid upon trade organizations the responsibility for obtaining compliance by their members with agreements and awards. This early recommendation of a method of enforcing arbitration agreements and arbitral awards through trade practices has been proved to be necessary by the fact that, since the 1933 Con-

20. For references to the arbitration laws of the various Latin American countries and to further source material, see the articles on *Civil and Commercial Arbitration* (contributed by this writer) in the publications of the Library of Congress (LAW LIBRARY, LATIN AMERICAN SERIES): A GUIDE TO THE LAW AND LEGAL LITERATURE OF MEXICO 100 (1945); BOLIVIA 26 (1947); ECUADOR 29 (1947); PARAGUAY 14 (1947); PERU 52 (1947); URUGUAY 39 (1947); VENEZUELA 33 (1947); CHILE 1917-1946 35 (1947); ARGENTINA 1917-1946 65 (1948).

21. See Rule 18 of the RULES OF PROCEDURE OF THE INTER-AMERICAN COMMERCIAL ARBITRATION COMMISSION, as amended and in effect January 1, 1946.

ference, only two Latin-American countries enacted new arbitration statutes: Colombia embodied in its Law 2 of February 28, 1938, on the enforcement of arbitration clauses,²² most of the aforementioned legislative standards, whereas Brazil, in its enactment of a new civil procedural law in 1939,²³ did not fully take these standards into consideration.

The improvement of statutory arbitration laws in the various Latin-American countries, as recommended in the Resolution of the 1933 Conference of American States, became more and more a necessity when the Inter-American Commercial Arbitration Commission extended its activities. It is interesting to note that business organizations also recommended in their resolutions the adoption of these legislative standards. For example, the Inter-American Council of Commerce and Production advocated, in 1944, under its Economic Proposals for the Western Hemisphere,²⁴ ". . . the enactment in each Republic of the legislative standards set forth in Resolution XLI of the Seventh International Conference of American States, as a means of encouraging a wider use of arbitration."²⁵

Moreover, lawyers' associations increasingly took an interest in the promotion of modern arbitration statutes in the Latin-American countries. The Inter-American Bar Association at its Third Conference in Mexico City in 1944 adopted the following Resolution:²⁶

The Inter-American Bar Association affirms its approval of the principles of commercial arbitration in the adjustment of inter-American trade controversies and urges the enactment in each Republic of the legislative standards set forth in Resolution XLI of the Seventh International Conference of Inter-American States, as a means of encouraging a wider use of arbitration, and recommends to its members the use of the Arbitration Clause of the Inter-American Commercial Arbitration Commission in inter-American commercial contracts.

This Recommendation was more recently reiterated at the Sixth Congress of the Inter-American Bar Association held in Detroit, Michigan, in May 1949, when it passed the following Resolution:²⁷

1. That the Inter-American Bar Association recommends an increased

22. Diario Oficial No. 23727 of March 11, 1938; [translated INTERNATIONAL ARBITRATION JOURNAL 212 (1945)]; see J. Samper-Sordo, *The Arbitration Clause in Colombia*; 2 ARB. J. 279 (1938); BACQUES AN EDER, A GUIDE TO THE LAW AND LEGAL LITERATURE OF COLOMBIA 34 (1943); MEDINA, CONTRIBUCION AL ESTUDIO DEL ARBITRAJE COMERCIAL INTERNACIONAL 50 (1944).

23. Decreto-lei No. 1608 of September 18, 1939, Diario Oficial, 24410, October 13, 1939; see SANTOS, 10 CODIGO DE PROCESSO CIVIL INTERPRETADO 340 (2nd ed., 1941).

24. PROCEEDINGS, *supra* note 5, at 21.

25. Reference to that resolution was also made by the Inter-American Conference on Problems of War and Peace held in Mexico City in 1945, *supra* note 6.

26. On the basis of a paper by Eder, *Arbitrage Comercial Interamericano*, in MEMORIA DE LA TERCERA CONFERENCIA, TOMO II, 101.

27. 4 ARB. J. 110 (1949).

- development and use of commercial arbitration for the settlement of disputes arising out of inter-American trade.
2. That the machinery of commercial arbitration within the Western Hemisphere should also be used for disputes between individuals and foreign governments in matters in which those governments participate directly or through their agencies, and corporations in international trade.
 3. That the principles and standards as set forth in Resolution XLI of the Seventh International Conference of American States be embodied in the legislation of each country.
 4. That the Inter-American Bar Association recommends to the governments of the Western Hemisphere, the study and preparation of international agreements on commercial arbitration.

One of the principal problems with which international commercial arbitration in the Western Hemisphere is concerned is that of execution of foreign awards or of judgments entered on an award by a court of the country where the arbitration proceedings were held. The effective promotion of commercial arbitration, especially in its foreign trade aspects, will make it necessary that awards should be executed not only when the proceedings were held in the country of the debtor but also when it is a foreign award which has to be enforced. The early multilateral conventions to facilitate the enforcement of foreign arbitration awards were indeed concluded in the Western Hemisphere. The Montevideo Treaty of International Procedural Law of 1889²⁸ is an outstanding example which was followed by more detailed regulations in the Code of International Private Law (*Codigo Bustamante*) which was approved by the Sixth International Conference of American States held at Havana in 1928.²⁹ On March 19, 1940, a Treaty on International Procedural Law was signed by Argentina, Bolivia, Brazil, Colombia, Paraguay, Peru and Uruguay³⁰ (as yet not ratified by any of the signatory powers); it provides for a simplified procedure for the execution of foreign judgments entered upon arbitral awards rendered in any of the contracting countries.

In view of the existing inter-American multilateral agreements for the enforcement of arbitral awards, there was no need for the Latin-American countries to participate in the multilateral conventions which were con-

28. Art. 5-7: *Execution of Judgments and Arbitral Awards*; text in VITA, *supra* note 10 at 59 (ratified only by Bolivia, Paraguay, Peru and Uruguay).

29. Title X, Art. 423-433, *Execution of Judgments Rendered by Foreign Courts* [translated in Hudson, 4 INTERNATIONAL LEGISLATION, 2279 (1931), and in HACKWORTH, 2 DIGEST OF INTERNATIONAL LAW 86 (1941). The code is in force in Bolivia, Brazil, Chile, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Nicaragua, Panama, Peru and Venezuela].

30. SEGUNDO CONGRESO SUDAMERICANO DE DERECHO INTERNACIONAL PRIVADO, ACTA FINAL 43 (2d ed., 1940); Title III, Art. 5 (transl.), *On the Enforcement of Letters Requisitionary, Judgments and Arbitral Awards*; see 37 AM. J. INT'L L. SUPP. 118 (1943).

cluded in Geneva under the auspices of the League of Nations in 1923 and 1927.³¹ None of the countries of the Western Hemisphere (neither the Latin-American countries nor the United States of America and Canada) participated in these conventions.³²

The lack of multilateral agreements, however, does not prevent an effective enforcement of foreign awards by the courts of the country where the debtor resides, whenever the latter remains reluctant to comply with the arbitrators' determination. Arbitration statutes of the various Latin-American countries do not provide for the execution of foreign awards since the statutory laws deal only with awards which were rendered in the country where they are to be enforced.³³ The execution of foreign awards and of judgments entered upon such awards are generally subject to the condition of reciprocity. If reciprocity is not obtained through treaty, foreign arbitration awards and judgments have the same force as that which is granted to foreign judicial decisions by the country in which the award was rendered. For example, American awards will have the same force in Mexico as Mexican awards are granted in the United States. Such enforcement has been considered favorably by American courts, since the leading New York case of *Gilbert v. Burnstine*,³⁴ followed recently in *Sargant v. Monroe*,³⁵ both dealing with the execution of London arbitral awards against New York parties. It is a well-established rule of American conflict of laws³⁶ that the validity of a judgment of a foreign court entered upon an arbitration award is determined by the law of the place where the award was rendered or where the judgment entered upon such award was obtained.

Codes of civil procedure in the various Latin-American countries embody certain requirements for the enforcement of foreign judicial decrees—and not only of foreign judgments entered upon arbitral awards.³⁷ Among them is the requirement that the award has been rendered in a personal action where jurisdiction upon a foreign debtor was not obtained in rem, that the award constitute a final determination of the issue in the country where it was rendered, and that it conform to the law of the country of its origin

31. *Protocol on Arbitration Clauses*, of 1923; *Convention on the Execution of Foreign Arbitral Awards*, of 1927; text reprinted in *INTERNATIONAL YEARBOOK*, *supra* note 4 at 239.

32. With the exception of Brazil which adhered to the Protocol of 1923; Decree No. 21187 of March 22, 1932.

33. See LORENZEN, *Commercial Arbitration — Enforcement of Foreign Awards in SELECTED ARTICLES ON THE CONFLICT OF LAWS* 506, 519 (1947).

34. 255 N.Y. 348, 174 N.E. 706 (1931).

35. 268 App. Div. 123, 49 N.Y.S.2d 546 (1944).

36. See *Moyer v. Van-Dye-Way Corp.*, 126 F.2d 339 (3d Cir. 1942), which held, with reference to 2 BEALE, *THE CONFLICT OF LAWS* § 347.06 (1935), that ". . . the validity of an arbitration award is determined by the law of the place of its rendition."

37. For a survey, see VITA, *supra* note 10 at 48.

and that its execution shall not require any act prohibited by the law of the country where the enforcement is sought.

The extensive use of commercial arbitration in the Latin-American countries cannot, however, be obtained by the improvement alone of statutory laws. It will be necessary to make more use of the existing facilities and machinery for arbitration which Chambers of Commerce often offer for the settlement of disputes in the domestic trade. Of greater importance is the use of commercial arbitration in international relations, between businessmen of the various countries of the Western Hemisphere. Here the activities of the Inter-American Commercial Arbitration Commission offer a good example that by elimination of unsettled controversies between nationals and corporations of different countries, good understanding will be furthered.³⁸ These Inter-American facilities are also available within the framework of the International Chamber of Commerce in Paris, which concluded, in 1947, an agreement with the Inter-American Commercial Arbitration Commission providing for the mutual use of the facilities of the respective organizations.³⁹

The activities of the Inter-American Commercial Arbitration Commission and of the Chambers of Commerce in the various Latin-American countries encourage an increased use of the available arbitration machinery. This is all the more true as the Charter for an International Trade Organization, as agreed upon by fifty-four countries at Havana, Cuba, on March 30, 1948, provides in its Article 72, as one of the functions of the organization "to undertake studies, and having due regard to the objectives of this Charter and the constitutional and legal interests of Members, make recommendations and promote bilateral or multilateral agreements concerning measures designed . . . to facilitate commercial arbitration."⁴⁰

The combined efforts of business organizations and lawyers' associations for the promotion of inter-American commercial arbitration will benefit foreign trade and thereby the maintenance of the inter-American economic cooperation.

38. See Rosenthal, *Arbitration in the Settlement of International Trade Disputes*, 11 LAW & CONTEMP. PROB. 808 (1946).

39. *Resolutions adopted by the Eleventh Congress of the International Chamber of Commerce* 78 (Brochure No. 117, 1947).

40. See Domke, *The Havana Charter (ITO) and Commercial Arbitration Within the Western Hemisphere*, 4 ARB. J. (N.S.) 105 (1949).