NYIAC | New York International Arbitration Center

# Global Advisory Board Interview Series

Featuring Eric Schwartz

*Eric Schwartz*

Interview by: Jennifer Permesly, *Skadden Arps, Chair of NYIAC GAB Relations*

*NYIAC Global Advisory Board Co-Chair Eric Schwartz has had a fascinating career straddling two continents. Back in the US after 34 years in Paris, we sat down with Eric to learn about his career and perspective on the growth of New York arbitration.*

**Jennifer Permesly (JP): Eric, you have achieved what so many young arbitration lawyers aspire towards: a bi-continental career in international arbitration. You are respected in Europe and the United States and considered a fixture of the arbitration community in both cities. How did this all come to be?**

**Eric Schwartz (ES):** I had a French mother and a French professor for a father, so although I grew up in the United States, it was literally my dream to live in Paris. Out of law school in the late 1970s I found a job at a law firm in Paris and handled my first ICC arbitration in 1979 under Chris Seppälä before he went to White & Case. At that time, international arbitration was very Euro-centric — although domestic arbitration was well-developed in the United States, U.S.-based practitioners were largely absent from the international arbitration scene. American parties were signing on to Europe-seated arbitrations, but few US law firms were really taking note. The practice still remained relatively small, as was the international arbitration bar at the time, and I was one of a small number of American practitioners active in the field. We were then regarded as "pioneers," according to an article that appeared some years later in *The American Lawyer*.

*"If we could get 30 people in the room for an ICC arbitration event in New York in the early 1990s, we were doing pretty well."*

JP: **What changed?**

ES: In my view the Iran-US Claims Tribunal (followed during the first decade of this century by the explosion of treaty arbitration) changed things radically from the US perspective. All of a sudden whole armies of US lawyers were discovering international arbitration, and US courts were becoming increasingly exposed to international arbitration awards. By the late 80s/90s some American law firms had begun to set up specialized international arbitration practices, a trend that became particularly noticeable during the 2000s.

JP: **You became Secretary General of the ICC around that time period, in 1992. Tell us a bit about what ICC arbitration was like during your tenure.**

ES: Well ICC arbitration at that time remained very European focused. France and Switzerland were the two leading venues, and well over 50% of the arbitrators and practitioners were European or European-based. Many of the largest disputes derived from the development of infrastructure in Europe and the Middle East. At the time, Latin America, still in the shadow of the Calvo Doctrine, remained quite hostile to international arbitration, and Asia (like many in the U.S.) perceived the ICC as a Parisian institution. Much of my tenure at the ICC involved trying to change that.

The United States actually produced the largest number of parties back then, because of the reach of US business around the world. But at that time it was hard for me to imagine that NY would ever really become a hub for international arbitration, because I didn't believe that a non-US party would be motivated to agree to a US venue, although it was also around that time that the AAA came up with the idea of creating the ICDR and began making a bigger push to compete for international cases.

JP: **Why were you skeptical about New York as an international arbitration hub?**

ES: Well, firstly, because there was not much precedent for it. International arbitration tended to gravitate disproportionately to jurisdictions perceived as "neutral," such as Switzerland, the Netherlands and Sweden and to jurisdictions with modern international arbitration laws. In the '80s and '90s nearly every major international arbitration jurisdiction in Europe updated its laws to attract more international arbitrations, but not the United States, which continued to rely upon the relatively antiquated FAA and case law that was not necessarily easy for non-American practitioners to apprehend. There was also a disconcerting disconnect between arbitration speak in the U.S. and in Europe, in particular, in relation to important concepts such as the various European versions of "competence competence" in contrast to the uniquely American concept of "gateway issues" or the US approach to what was considered a "foreign arbitration" under the NY Convention — that a case wholly in the United States could be considered a foreign arbitration was a very unique and strange concept to Europeans.. Judgments such as the *McCreary Tire & Rubber* case in respect of interim relief did not help.

JP: **Well you are sitting here today as the Co-Chair of the US's leading arbitral venue's arbitration center. So how did we get here?**

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*"At that time, US arbitration lawyers seemed to be on a different planet than those from Europe"*

ES: It was a combination of many things. Growth and commitment of US law firm practices. The law schools developing their LLM programs. The creation of the ICDR. The ICC coming to NY to open offices. And the opening up of international arbitration in Latin America, including with Brazil's accession to the New York Convention in 2002 — all of these things, together with the development of treaty arbitration over the last two decades, have been very significant for the US and for New York.

JP: **You moved back to the US around the time NYIAC opened — about 10 years ago. How has the transition been?**

ES: I moved back here for family reasons, after 34 years in Europe. I had a lot of trepidation — I thought of Paris as the center of arbitration, and helped King & Spalding establish its office there. I didn't know what kind of career I would have practicing in New York. But even within the relatively short time frame I've been here, New York has grown into a leading arbitration center. It's a great community, with a lot of activity. It has really been amazing to me to discover how much the New York international arbitration community and New York-based international arbitration has grown.

JP: **You established an independent arbitrator practice in 2017. How is that going?**

ES: It's been quite active. In addition to a number of matters based in New York, I remain very much involved in arbitration cases based outside of the United States, as I was based for so many years in Europe. I'm very familiar with civil law so I am often thought of for cases where civil law is the applicable law. I'm doing some treaty arbitrations and I also have a strong speciality in international construction disputes.

JP: **Would you say that there are still significant differences between the practice of arbitration in Europe and the United States?**

ES: Less and less. We are all dialoguing constantly these days. To be honest, the rest of the world has become more like the US in style — this used to be described as the US "contaminating the field" with its litigious approach, but the truth is that arbitration in general has just become more complex, more sophisticated, more contentious. Non-Americans have discovered tools that can be deployed in arbitration that they can't deploy in their local jurisdictions. Far from the common wisdom that it is Americans who want more document production, I have found that Europeans will sometimes actually choose arbitration to be able to get access to documents, whereas Americans may think of arbitration as a way to limit that access. And in areas such as interim relief and procedural battles, non-Americans are often more zealous than Americans.

JP: **Any plans to return to Paris?**

ES: Due to COVID and Zoom, I haven't been back to Paris in 2 1/2 years, but I will be returning soon for my first in person hearing since early 2020. ■

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