In a legal career spanning 50 years, German arbitrator Karl-Heinz Böckstiegel has acquired a reputation for formidable efficiency. He’s often listed among the top 10 busiest arbitrators on high-value cases, most commonly in demand as tribunal chair.

As the originator of “the Böckstiegel Method” – a procedure that limits the time available for each side to present its case and examine witnesses but gives the parties discretion over how to divide up that time – he’s believed to have had a quiet but far-reaching influence over the development of arbitral best practices. As Jan Paulsson put it in a 2001 article, “the details of this method are not a matter of general knowledge” but “tend to become part of the intellectual property of fellow arbitrators, parties, counsel” who have appeared in his cases.

Böckstiegel developed that method in the mid-1980s during his tenure as president of the Iran-US Claims Tribunal in The Hague, the body set up to deal with the economic fallout of the Iranian revolution. He’s played a pivotal role in other institutions too, as co-founder and president of the German Institution of Arbitration (DIS) and the first non-English president of the LCIA.

Counsel who have appeared before him, such as David Rivkin, speak of Böckstiegel’s “intellectual brilliance” and scholarly accomplishment in diverse areas of law. His academic work on expropriation and state immunity laid the foundations for his career as an arbitrator, but he has also published widely in air and space law as well as antitrust and trade. Educated in Germany, Boston, Geneva and Paris, he held a specially created chair of international business law at the University of Cologne from 1975 until 2001. From 2004 to 2006, he was also president of the International Law Association.

Now 77 years old, he’s still hearing some high-profile treaty cases, such as Philip Morris’s claim against Australia over its cigarette packaging legislation; and the Ambiente Ufficio case brought by Italian holders of Argentine sovereign debt. He also chaired the Stockholm Chamber of Commerce (SCC) panel that ordered Kazakhstan to pay more than half a billion dollars to a group of Moldovan oil and gas investors last December.

Less prone than some colleagues to the limelight, he’s lately entered the fray to defend investor-state arbitration against its critics – arguing that it represents one of the milestone achievements of international law in the past 50 years.

Interviewed by GAR, Böckstiegel talks about how the field has changed over his long career, what he thinks of recent efforts to subject the process to stricter regulation, and his love for the works of 20th-century Irish modernist author James Joyce.
How did you get your start in arbitration?
It was in the early 1960s during my legal education, when I was a stagiaire at the ICC in Paris. Frédéric Eisemann was the secretary general of the ICC Court of Arbitration at that time, and I worked for him for three months. I helped with the case management, though there wasn’t the caseload that there is today. That led me to publish a paper in the American Journal of International Law in 1965 on states as parties in ICC arbitrations. In the meantime, I’d already written my doctoral thesis on the protection of property in international law.

When I finished my legal training, I joined a law firm in Düsseldorf. I specialised in antitrust and foreign trade law and published in that field. As outside counsel, I negotiated some contracts for a steel company called Krupp – it’s now known as Thyssen. That led to a couple of ICC arbitrations concerning factories in Senegal and Iran. I didn’t know much about arbitration at the time, but nobody did back then.

So for some time that was my only contact with arbitration. Then my doctoral thesis was published, and I was invited by the University of Cologne to pursue an academic career. To be accepted as a full professor, I had to write a huge book that turned out to be about states as partners of foreign private enterprises. This was around 1970. They liked the book and created a chair of international business law for me, which included arbitration. But I still didn’t know much about it!

My first international arbitration conference was the ICCA Congress in Moscow in 1972. The ICCA was still quite different – just a small group of friends. I didn’t know anybody. The most prominent German members were Arthur Bülow, the secretary of state in West Germany’s ministry of justice, and Ottoarndt Glossner, the general counsel of AEG – at that time, one of the largest electricity companies in the country. These two had been members of the German delegation to UNCITRAL in 1958 when the New York Convention was first proposed. I got acquainted with them at the conference and they invited me to co-found the DIS.

How did the DIS come about?
There was nothing like it in Germany at the time. The German Foreign Trade Association had some arbitration machinery, but it was quite different and very limited. Bülow and Glossner took the initiative. When they got back to Germany, they got together with the ICC’s German group and some others who were interested – and since they’d met me at ICCA, they asked me along too.

At that time it was called the German Institute of Arbitration. It engaged in scholarly exchange and the promotion of arbitration. It didn’t have any arbitral rules or administer cases. But as foreign trade developed and arbitration grew in the country, DIS got bigger. This was still in the divided Germany. In 1992, after Germany was reunited, we refounded the DIS to bring in the East Germans. By now, all the chambers of commerce were members. At that time, I was already the vice chairman and Glossner was president. We then decided that the DIS should start administering cases. It was my idea to change the name in a way that could help us keep the DIS abbreviation – it became the German Institution of Arbitration. We created arbitration rules and the institution grew. In 1996, Glossner resigned and I became president, a role I held for 16 years. Now the DIS has more than 1,200 members.

How did you get your first arbitrator appointment?
It was in 1973, when I was asked to be a tribunal chair. It was an ICC case between a French company and Greece concerning the railway between Athens and Thessalonika. Oddly, the seat of the arbitration was in Basel. I got asked because I was involved in the DIS. But I was still a young professor and had never sat as arbitrator before, so I hesitated and talked to the ICC, who persuaded me to accept. I did that case and nobody complained. After that, I was asked rather regularly and accepted when I could. So by the time we refounded the DIS, I already had quite some experience as an arbitrator.

You became president of the Iran–US Claims Tribunal (IUSCT) in 1984, at a critical moment in its history. How did that come about?
You never know how such appointments are decided. It was highly political. I gave a lecture at a large event in Paris in 1983 to mark the 60th anniversary of the ICC Court and I suspect this put me in somebody’s mind. I was known for arbitration involving state parties and I had written about expropriation so I’m sure that helped too. The way it worked is the Iranian and US government representatives got together in The Hague and came up with some names.

The president of the Dutch Supreme Court, Charles Moons, came to my house in the summer of 1984 and asked me to take the job. Later, he told me that relations at the tribunal had broken down because two of the Iranian arbitrators had physically attacked one of the other arbitrators, a Swedish judge. He said, “This may be more difficult than we thought.”

So I took over, but I didn’t want to give up my chair at the university. I negotiated a deal – I would teach four hours every Monday morning in Cologne and then go to the The Hague for the rest of the week, then come home at the weekend.

It took about three months for the tribunal to get going again. The Americans refused to work with the two Iranians who committed the assault, so they were withdrawn and replaced with colleagues who were less aggressive.

What was your experience of the IUSCT?
It was the tribunal’s busiest time. We had 4,000 cases and we had to find ways of dealing with them. Judge Lagergren hadn’t been so interested in case management. A number of the cases hadn’t yet evolved to the stage where the tribunal could deal with them. After a transitional period, the other third-country arbitrators were Robert Briner, later to become president of the ICC Court, and Michael Virally of
France, a very prominent professor of public international law. We cooperated very well. I created the chairmen’s meeting [the IUSCT had three chambers at that time, each chaired by one of the third-country arbitrators], which neither the Americans nor Iranians liked because they felt they were discussing things without them, but it was the only way to coordinate before we went into the full tribunal.

The Iranians always wanted to move more slowly, as in most of the cases their country was the respondent. I had to decide how many cases we did and how to do the hearings. That’s when the Böckstiegel method was invented, because we had limited time for hearings and had to find a way that was relatively best for the parties.

The tribunal adopted the UNCITRAL rules in modified form. But the problem was, and still is, that under the UNCITRAL rules you need a majority. In other words, if one arbitrator says zero and the other says 100, and you feel as a chairman that neither is correct, you cannot say “I decide 50”, which is possible under ICC and SCC rules. So there was a lot of bargaining and poker-playing going on. But the Americans in particular understood that it was better to agree than not to have an award at all.

Does that kind of bargaining still happen in UNCITRAL cases?
I haven’t encountered it. I’m rather lucky in that in most of my cases I sit with people who are knowledgeable and don’t feel they are the advocate of one side. That sort of thing does of course still happen, but it’s normally only one of the co-arbitrators so you can still form a majority. I recently had an SCC case where I came close to deciding the matter alone as chair because we couldn’t agree for a long time, but finally we did all agree. I haven’t had a similar situation where I’ve had to use my deciding vote under ICC or SCC rules.

Do you tend to sit with the same arbitrators?
It’s not my choice but I do find myself more often with people I either know well or have sat with before. Some would call them the usual suspects. Mostly I do rather large cases and the same individuals come up as party appointments.

How many cases do you have on at the moment?
Right now I probably have at least 15 cases, all of them rather large. I try to keep it half-and-half between investment and commercial arbitration. Sometimes I accept a case when I shouldn’t because it’s intellectually stimulating and different.

I try to mix chair and party appointments. I’m asked to be chair very often but I say no quite often too. If I look at my calendar and feel I may not have enough time to do the job really well, I’d rather say no at the beginning. My wife still thinks I say yes too much.

Are you ever appointed by states?
I have been three times, but in two of those it never came to an award. The other is still pending.

It seems that some investment arbitrators tend to get most of their appointments from investors and others from states. Is that fair? Charles Brower and Brigitte Stern are often held up as examples.
You can see the truth of that by simple statistics. I don’t think it’s a good development. On the other hand, as a practical man I can understand why an investor or a state may want to pick a certain arbitrator again, feeling they can get the best out of a case. There are limits, but I’m glad I don’t have to draw them. But even the two chief examples of this phenomenon – and I’ve worked with them both – are still very independent. They’re such good lawyers. They try hard to put their views across but never unreasonably.

What kind of case do you find most stimulating?
I don’t think I have a preference. I find investment arbitration interesting because it has a mixture of laws. But you can end up doing the same kind of ICSID case three times in a row, with the same issues, the same arguments, the same damages experts on each side coming out with estimates that are wildly different. That work has to be done but it’s intellectually less interesting.

Commercial cases can also be very similar: M&A cases, for example, or cases involving long-term contracts for oil supplies where the parties want a price adjustment. Basically the same discussion occurs every time. I’ve also stopped doing construction cases because they’re not terribly exciting; you’re essentially just counting bricks.

Do you still do counsel work?
No, I stopped working as counsel or giving advisory opinions a long time ago. It’s too complicated and creates too many conflicts. I only work as arbitrator and give lectures once in a while.

Where do you stand on the “double hat” debate about whether it’s right to combine arbitrator and counsel work?
I’m aware of all the arguments but luckily it doesn’t concern me. There’s no perfect solution. For me, it’s certainly been helpful as an arbitrator that for many years I negotiated contracts for companies, even though I wasn’t involved as counsel in arbitrations for a long time. It’s useful to know how contracts work and the circumstances in which they’re drafted.

But I can see that for the outside world, it looks more like a conflict of interests. Obviously if somebody is counsel before you in one case, it’s difficult to have him as co-arbitrator in another case. But institutions have drawn the line in different ways. I was on the IBA committee that drafted the guidelines on conflicts of interest but I stayed out of the double-hat discussion as I felt it should be decided by those whom it really concerns. It was one of the few topics where the committee couldn’t reach an agreement. The conflicts guidelines are being revised at the moment, but I don’t know how they’re going to come out on that issue.
**Do you have much in the way of support staff?**
Very little. I’ve always felt if you are asked to sit as arbitrator, it’s a personal mandate. The parties aren’t appointing a team, they want you personally. But whenever I’m in a chair, I suggest to the parties that I appoint a tribunal secretary for the logistics of the case. I normally have a young lawyer who is at the end of their studies and is knowledgeable in the field. They are relatively young and much less expensive than a junior associate from a law firm. I normally only accept them if they’ve done some moot exercises or had some experience in a firm, and can start work straight away doing the procedural history. The parties are generally happy to accept that, particularly if I’m paid by the hour or by the day, as I can explain that if my assistant doesn’t do it, I’ll have to do it for a much higher rate. With ICC cases it’s different, as the rule now is that arbitrators have to pay for tribunal secretaries out of their own salary.

I also have a private secretary. I work from my home in Bergisch Gladbach [a town east of Cologne], a large country house in the middle of many trees. I have a relatively large study, a large library and two cats. They help me in their own way.

**You were panel chairman at the United Nations Compensation Commission in Geneva for two years. What was that experience like?**
It was a very different process. It had been set up by the UN Security Council after the first Gulf War, and the procedural rules were very one-sided because they were dictated by the winners. I fell back on the UNCITRAL rules and insisted on having a hearing in person with the parties. It had been done in writing before then. That was the Egyptian Workers’ Claim, which concerned around a million workers who had lost their income because of the war.

But the UNCC was really a side job. It was like a large arbitration, except that the numbers were different and you had to use computer experts to process the claims. Two of my former assistants at The Hague were also there, including Norbert Wühler, who is still around, and someone from the Iranian side. A lot of people who were legal assistants at the tribunal in The Hague took jobs at the UN.

**You became president of the LCIA in 1993. How did that come about?**
That was also a surprise. The LCIA had existed on paper for a long time, but it was Sir Michael Kerr, a prominent High Court judge, who really got it going again. I was initially asked to become chair of the LCIA’s European council. But shortly after that I got a letter from Kerr – back in the days when one still got letters – inviting me to be president. I did that for four years. I was the first non-English president of the LCIA. Yves Fortier came after me. Since then, the post has always been international. It’s probably about time they asked an English person.

**What do you think about the LCIA’s draft guidelines on counsel conduct?**
I think they’re overkill. The IBA guidelines on party representation are also overkill. There was a long debate at the IBA Day in Paris on the IBA guidelines, and I’m more on the side of Michael Schneider, who’s been very critical of them. But I understand and accept that in other parts of the world, legal traditions are so different that it may be helpful for the lawyers to have something to look at.
Do you think they will expose the process to more disruption? I think so. It will happen. The Swiss Arbitration Association is opposed to the IBA guidelines but they will stay in place. They will bring benefits but they will create new challenges, and incite fights that weren’t necessary before.

Have you encountered counsel who don’t know the rules of the game? I have had very few cases where there hasn’t been a level playing field, the reason probably being that I have large cases involving large law firms. A couple of times I’ve seen governments as respondents thinking they could save money by using their own people to do the case. That is not normally a good idea or in the state’s interest. They lose money by the end. The only two exceptions to that are the Iranian government lawyers at the Hague tribunal, who had so many cases that in a short time they knew more about arbitration than the US law firms they were up against.

I’ve seen a similar thing with Argentina. I’ve been on four Argentina cases, two still pending. They’ve had 40 or more cases, many of them at ICSID, and have defended them with their own people, whom I’ve found to be excellent – particularly the former head of the team, Gabriel Bottini.

Are there any habits that counsel appearing before you should avoid? There was one incident where counsel on one side – a rather prominent English barrister – cross-examined a witness in a way that was not only aggressive but intimidating, to the extent that I felt as chairman I had to intervene. I thought the testimony coming out of the witness couldn’t be helpful any more. The poor man was shaking, he didn’t know what to do or say. James Crawford was one of my co-arbitrators on that case. When the hearing was over, he said to me, “That was a clash of cultures!” But that’s the only incident of that kind I can think of.

Should tribunals have more power to sanction counsel for misconduct? In practice, I’ve found it more productive to engage in reasonable discussion with counsel in such a way that nobody goes crazy. If there’s a real problem, you discuss it honestly with them and you find a way out. Arbitrators have authority to decide on the procedure as they consider appropriate within the rules.

But it depends on the lawyer. You see so many arbitrator challenges these days, counsel feel almost mandated to use any option they have procedurally, regardless of whether it’s successful or convincing. They just feel that’s what they have to do for their client. It complicates the process, causes delay and extra cost.

You’ve said you regret the fact that so many international law professors sit as arbitrators and not enough practitioners. Why is that? I’ve made that incautious remark more than once, but in the context of a discussion with some of my colleagues, including Emmanuel Gaillard, who feel investment arbitration is there to develop the law. I’m a much more pragmatic person. I feel you have to decide the case before you, no less but also no more. If your award has an impact on the development of international law, that is most welcome, but it’s not supposed to be a treatise. Being a professor myself, I have strong feelings on this.

So you don’t feel obliged to make your awards cohere with other decisions? In deliberations, we look closely at what others have done and sometimes it’s very convincing. Where the authorities don’t agree on an issue, I have to make up my mind who is more convincing. I certainly don’t neglect the large body of jurisprudence in investment arbitration. The parties force us to look at it! But I don’t feel bound by it in any way.

After so many years, I have learned that every case is different. It’s too early to draw conclusions from another case before you sit down, read all the submissions and see whether the circumstances really are the same. The advantage of arbitration is that both the procedure and the decision can be tailor-made to the case at hand. That’s the approach I have in general.

Do you think investment treaty arbitration will survive in the long term? I think it will survive. A bit like democracy, investor-state arbitration is not perfect, but it’s still better than all other systems yet proposed.

Much of the present criticism has forgotten the developmental nature of the global economy and international law. It’s a very young field, with the present criticism overlooking the significant role that the US played in the development of the law. Arbitration is not perfect, but it’s still better than all other systems yet proposed.

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good reasons for the increased transparency and I expect it to grow in the future. However, in my experience it does not make the procedure more efficient. If the proceedings are open to the public, the parties’ written submissions and oral presentations tend to be less focused on the professional exchange with the tribunal and become public statements. As an arbitrator in such public hearings, I noticed that my remarks would go beyond what I would normally say in addressing counsel, just to make sure those in the audience less familiar with the details of the case, including the media, would not misunderstand. And the procedures may also become more costly if they include the admission of amicus curiae briefs.

Would a larger pool of arbitrators address some legitimacy concerns? You’re on an infamous list of 15 names that have supposedly decided more than half of all known investment cases.

I don’t apply to be an arbitrator, I’m asked. Much like Yves Fortier and Johnny Veeder. It’s not our fault if we’re asked more often than somebody else. Parties and counsel who have a large case want somebody who has done this kind of work before, not someone learning on the job. I had to decide on chair appointments when I was president of the DIS and the LCIA. I am very much in favour of giving young lawyers opportunities, but I would never appoint someone who had never done it before. It was our responsibility to find somebody experienced, and some people — like Toby Landau, say — become experienced earlier than others.

But for all that the pool of arbitrators is growing. At the DIS, when dealing with smaller cases, we consult the parties and explain that smaller cases mean smaller fees, so the old guys are less easily persuaded to do them. So in those situations we appoint somebody young and it works very well. But you can’t force it.

The arbitrator pool may be growing in size but what about diversity? It still seems to be dominated by white males.

That is true but for similar reasons. I remember a long time ago I was a member of the Euro–Arab Dialogue on Dispute Settlement. We met in Paris, and people from the Arab world would stand up and say, “We must have more arbitrators from the Arab world!” and everyone agreed. Soon after, I did a case between Saudi Arabia and Tunisia — and they appointed three Europeans!

In practice, I have so many cases spread all over the world where parties would easily have a chance to appoint more people from their own region, yet they often choose the usual suspects. But we do have more arbitrators from other parts of the world and that trend should continue.

What advice do you give to young people trying to get into this field?

Whenever I meet young people trying to get into arbitration, the first thing I tell them is how much more they know than we did. When I started 40 years ago, there were very few publications, no German arbitration rules, and nothing was taught at university or anywhere else. There were some specialists in England, France and Switzerland, but very few in Germany or the US. You had to learn by doing it, and only a few law firms did it. Nowadays, there’s more information about arbitration than you can digest.

In my very first case, all I had was the ICC rules and common sense: no commentary, no guide, nothing. Of course, you had to look at the law at the seat of arbitration, but that was all. Now the field has become very sophisticated, with guidelines and best practices. It is more difficult for somebody starting out. It is a closed shop to some extent because you have to know how things are done in a much more complete way than 20 years ago, when it was probably still okay to just look at the rules and start from there.

It’s not just an issue for young people. You also see it with senior judges who decide to become arbitrators after retiring. Some are flexible but others feel that nobody can tell them what to do. They think being an arbitrator is just the same as being a judge. If they don’t learn that it’s different, they won’t be getting appointments for long. You have to realise that you’re there because the parties agreed on the procedure and appointed you, or agreed on the institution that appointed you. You depend on the parties so you better talk to them first before you decide anything. Sometimes judges are very impatient and don’t make themselves acquainted with how international arbitration is conducted. Young people often know more than the judges — though I’m not saying they are better jurists!

Has the profession become too crowded?

Young people love it, of course. Even in a small country like Germany, the DIS’s under-40 group has more than 1,000 members. It may be a more crowded field, but of course the market is still growing. In spite of all the criticisms, it will probably still grow because world trade and investment will grow. There will be disputes, and as long as we don’t have a better system we will end up in arbitration.

Can you see yourself retiring?

My golfing friends often ask me, “Why the hell are you still doing this?” I’ve reached the stage where I don’t have to work for money any more, so I can decide how to spend my time. I have literary interests. At home I have a collection of works by and about James Joyce and a parallel author in Germany, Arno Schmidt. I love the way they play with language. I’ve also been to Dublin a couple of times, once for Bloomsday [commemorating the day on which the events of Joyce’s Ulysses take place].

So I’m in a privileged position that I can say yes or no when I’m offered an arbitration. It’s not always the large cases I accept. Recently, I took a DIAC case in Dubai because I’d never done one there before. I’m always looking for something intellectually challenging and different from what I already know, as you learn so much about other parts of the world and their judicial systems. I can’t imagine doing nothing but playing golf and reading Joyce.