How the LCIA chopped off talking heads

Call it what you will -- the “LCIA symposium format” or the “Tynley Hall style” – the wonderful truth is that once you have seen it you don’t want to go back. It is copied all over the world.

Like many good things in life, it did not emerge full blown as a brilliant idea, but rather evolved as incremental adjustments to the solution to a problem that Bertie Vigrass stumbled upon one day nearly 40 years ago. He was the jack-of-all-trades (officially the Registrar) of the London Court of Arbitration, which in 1981 added “International” to its name. This called for an attempt at some form of international recognition. Bertie was somehow able to identify leading lights of international arbitration on the European continent, secured their addresses, and wrote to inquire politely whether they would be interested in coming together for a retreat in the English countryside to canvas issues pertaining to international arbitration being faced in all the major European jurisdictions, and dealt with by courts, arbitrators, and advocates in interesting ways and with various degrees of success. To his surprise, the invitation was accepted by the best-known of the targeted continental specialists, including for example Piet Sanders from the Netherlands, Claude Reymond and Pierre Lalive from Switzerland, and Ottoarndt Glossner from Germany. That the English invitees responded favourably was less surprising; there were such personages as Michael Kerr, Johan Steyn, Clifford Clark, Leslie Alexander, and the colourful artist of maritime arbitration, Cedric Barclay.

This put Bertie in a quandary: having managed to assemble such a group for a high-level intellectual exchange, who would address the gathering – and on what topics? After wrestling unsuccessfully with this question, he capitulated in what turned out to be an ingenious way: since these are all great specialists, he told himself, let me ask them what they consider to be the most important issues, and then circulate the questions in advance. Shouldn’t they be able to keep an animated conversation going without prompting?
By dint of generous inspiration, two youngsters were then asked to come along as some sort of minimalist prototype of “Young LCIA” before its time: Johnny Veeder and myself. It turned out to be quite a revelation for us. Typical international arbitration conferences of the day consisted of a series of representatives of different countries standing at a podium and reading out tedious papers describing the laws and regulations pertaining to arbitration in their home jurisdictions. Although everything they said was readily available in writing, somehow it was considered acceptable to convey to captive audiences such information as the number of copies of introductory pleadings that should be provided and whether awards had to be registered in a local court. It was like listening to paint dry – or, as Johnny once put it (in fact more than once): the listener was uncertain of his feelings, save that they vacillated from murderous to suicidal. But what we discovered at Selsdon was an exciting, spontaneous format that led to insight and revelation at the cutting edge of the art and science of our vocation.

As Claude Reymond was to put it (2002) in his review of Michael Kerr’s autobiography: “the sessions proved that it is possible to have a fruitful exchange of views without written reports, and that participants speak more openly when there is no publication of the debates after the meeting.” Bertie, now in retirement, says today that the only trick was to convince the right persons to lead the discussions, and to follow these instructions: “stir it up and keep it going, but do not dominate!”

It worked.

The first Selsdon sessions were open to attendance by invitation only, and the participants numbered only between 20 and 30; not because Bertie was of an elitist cast of mind, but simply because he wasn’t sure the event would be a success. The unexpected result was that the word spread and invitations came to be highly prized. Even now, when the party has long since moved to the more spacious Tylney Hall and attendance has vastly multiplied, law firms are subjected to a rigorous quota of attendees.

Looking back at that original gathering of European males, should one conclude that diversity was not on the agenda of the LCIA? There are certainly indications to the contrary. At the very moment the LCA became the LCIA, Bertie Vigrass’s was seen consciously reaching out beyond the English constituency. The first President of the LCIA (Michael Kerr) was a cosmopolitan of the first order, perfectly at home in German and French, and – more to the point – insistent that his successors should not be English, and that no more than ¼ of the Court itself should ever be comprised of English members. When Karl-Heinz Böckstiegel took over from Michael, I can testify, there were rumblings from some quarters that this was sending exactly the wrong message – “that there is no one in England competent enough to lead an international arbitral institution!” That view was rejected, emphatically and enduringly so; Karl-Heinz was succeeded by four consecutive additional non-English Presidents. Nor was the institution Eurocentric: not long after the turn of the century, on the same occasion the six vacant seats on the Court were filled by nationals of Argentina, Iran, Korea, Pakistan, Russia, and … oh yes, one Scandinavian.

As for gender diversity, one might point out that when the first English successor to Michael Kerr was finally elected, it was (and to no one’s surprise) Judith Gill. But still: were the senior figures who first met in Selsdon motivated by the need to protect themselves as a group, and conscious of forming a self-perpetuating cabal? I suggest that anyone formulating the question in that manner would show a bias: making assumptions about people they do not know. Having been a fly on the wall at those meetings, I rather had the impression that the “grandees” of arbitration would have been astonished –perhaps not unpleasantly so – that anyone would think of them as such, and rather regretted that their specialist business was so unglamorous. My guess is that they would have been more than happy to see new faces, both as arbitrators and advocates – thus creating more stimulating constellations of national origin and gender. They would have been thrilled to see what their gathering has become.

By Professor Jan Paulsson.