LCIA Perspectives
Views from the Continent

Much like Belgian or Swiss chocolate aficionados may have a certain idea of what proper chocolate should taste like (and may therefore look suspiciously at a green box of British After Eight), as continental European lawyers, Laurence and Rémy joined the LCIA Secretariat carrying with them certain preconceived ideas of arbitration in general, and LCIA arbitration in particular. Coming from a civil law jurisdiction, they expected to find, at the LCIA, some of the hallmarks of so-called ‘British-style’ arbitration. As they themselves now admit, their perceptions could not have been further from the truth.

When we joined the LCIA’s casework team, we shared two conventional (but incorrect) assumptions. These were, first, that there was such a thing as ‘typical LCIA arbitration’, and second, that this typical LCIA arbitration reflected British-style arbitration.

To be fair to our younger and admittedly more naive selves, it is not uncommon to hear civil law practitioners relay one or more of the following misconceptions about LCIA arbitration: (i) that parties are universally represented by London based Solicitors and/or Barristers, (ii) that arbitrators are drawn exclusively from the London legal market, and (iii) that procedures are either inspired by the English Civil Procedure Rules (the CPR) or, worse, by the world of British maritime arbitration. Other clichés include a ‘High Court inspired’ approach to document production, an inflexible uneven number of written submissions (culminating in a reply from the claimant instead of a rejoinder from the respondent), common use of skeleton arguments, long hearings, aggressive irrelevant cross-examination, etc.

It is true that in many LCIA arbitrations the governing law remains English law and the seat is London. It isn’t, therefore, illogical to expect this to impact the choice of counsel and arbitrators, which in turn could lead to giving to LCIA arbitrations a British flavour.

However, what struck us most when we joined the Secretariat was the remarkable diversity in LCIA arbitration: no two cases were alike. Where we expected to open a box of cloned mint chocolate thins, we found an eclectic assortment of fine chocolates (regretfully, we must abandon the cocoa metaphor here).

LCIA arbitrations rarely fit the stereotype

In many cases, a neutral observer would be hard-pressed to tell the difference between LCIA arbitration and continental-style commercial arbitration run under the rules of other well-known continental institutions such as the ICC, the SCAI, the SCC, the VIAC or the CEPANI.

By way of illustration, we were somewhat surprised to see that the number of written submissions, their styles and their denominations (eg. statement of case, statement of claim, memorial etc.) varied greatly from case to case. Likewise, procedural choices made by arbitrators rarely followed stereotypical patterns, let alone ones that mirrored English court litigation.

We also quickly learned that the Secretariat very frequently reviews draft awards for glaring errors before their issuance, even though such informal scrutiny is not mandated by the LCIA Rules. During our time at the LCIA, we even saw (albeit rarely) arbitral tribunals adopting terms of reference despite the absence of prescription to this effect in the Rules.
Of course, this diversity in the way cases are handled is explained in part by the varied geographical backgrounds of the parties and their counsel. The vast majority of parties in LCIA arbitrations are not English, and cases in which all parties are British are an oddity. Apart from the ICC, no other arbitral institution can claim such a level of internationalism. But the diversity of parties and counsel is only part of the larger picture. In hindsight, we can see that such diversity in procedural approaches also mirrors the LCIA's chosen approach to case administration.

**Pragmatism as a case management ethos**

Upon joining the Secretariat, we were also struck by the remarkable commitment of the institution’s leadership to user-friendliness and adaptability.

The LCIA’s approach to case management balances consistency in the application of the arbitration Rules (which all institutions strive to achieve), with a genuinely flexible and pragmatic case management ethos. This ethos guides not only the decisions of the LCIA Court but also the day-to-day work of the Secretariat. At the LCIA there is indeed a sense that bureaucracy should never be allowed to prevail over common sense because the institution is at the service of its users, and not the opposite. Arguably, this ethos is characteristic of the Anglo-Saxon business culture. In that respect, the LCIA may indeed be said to divulge its English heritage.

From a practical point of view, the implications of this pragmatic ethos are three-fold:

**A long standing commitment to speediness** - The institution has long placed an emphasis on speed. For instance, it seeks to deal extremely quickly with communications and requests from the parties to the proceedings. Within the same or the following day of receiving a request for arbitration, the LCIA Secretariat will normally have gone through it and written to the parties with indications as to the next procedural steps. While this is now becoming standard at many other institutions, this has long been a hallmark of LCIA arbitration.

Likewise, the Secretariat immediately refers to the LCIA Court any matters and requests from the parties requiring a decision from the Court, such as a request for the expedited formation of the tribunal or challenges to arbitrators. Further, the Secretariat and the Court (in particular, its President and VPs) are able to liaise swiftly via informal communication means, such as emails and telephone, rather than through established weekly meetings or by way of formal reporting.

**A tailored approach to case management** – A hallmark of LCIA arbitration is the institution’s insistence on ensuring that communications from the Secretariat to the parties and decisions from the Court should always be bespoke and take into account the specific features of, and the latest developments in, each matter. Historically, the LCIA has had a low tolerance for the use of ‘cut and paste’ communications (which of course did nothing to make our lives as LCIA counsel easier!).

**A commitment to party autonomy and procedural flexibility** - The LCIA Rules are not prescriptive regarding procedure. Apart from the new requirement in the 2014 Rules for tribunals to make contact with the parties within 21 days after the formation of the tribunal, the Rules impose almost no particular requirements regarding the conduct of the arbitration.

Remarkably, this absence of prescriptions has not been filled in with policies developed by the Secretariat or the Court. To the contrary, the LCIA has ensured to maintain this existing freedom. For example, first communications and procedural steps may vary from short directions by email to formal procedural orders, or even terms of reference if appropriate (e.g., under the law applicable to the arbitration). The procedural timetable may be tentatively established at the beginning of the proceedings, or step by step in light of the developments of the case (knowing that the Rules provide for a default timetable failing an agreement between the parties). If requested by the parties, related cases may be heard together by a tribunal and administered accordingly by the LCIA, and so on.

As a result, there is certainly no sense in LCIA arbitration that institutional history and habit is fettering the procedural choices of the parties and the arbitrators. Admittedly, the flip side of that coin is that some decisions can be less predictable than in other types of institutional arbitration, where internal practices are well established and visible. However, at a time when the users of international arbitration continue to express concerns about costs and duration of proceedings, and when in-house counsel are facing increasing pressure on their litigation budgets, procedural flexibility and speediness seem more important than ever. And so, more than ever, the LCIA’s case management ethos seems particularly welcome and relevant.