Director-General’s Review of 2002

Introduction

I am pleased to be able to report another highly successful year for the LCIA in 2002, in all its areas of activity. Our casework has grown again, both in numbers and in diversity, whilst our conference programme has similarly expanded and diversified.

In addition to the growing number of arbitrations referred under the LCIA arbitration rules, the LCIA now administers a number of private adjudication schemes in different commercial sectors, having initially taken an active role in the analysis of the users’ requirements and in the drafting of tailor-made procedures. Although still only a very small part of the LCIA’s business, mediations referred under the LCIA procedures, which were introduced at the end of 1999, are finally starting to filter through.

On the conference front, we were busier than ever in 2002. In addition to the much loved Tylney symposia, we put on a further 2 traditional symposia in Brussels and in Durban and ran another full programme of themed one-day seminars in London.

Such is the increase in our various activities that our new offices, which we acquired only three years ago, in the belief that they would meet our accommodation requirements for at least five years, are now under pressure, despite our having taken on overflow accommodation for our archives. This happy problem of success coincides with the progress made in the past three years by the International Dispute Resolution Centre (IDRC), at which the LCIA secretariat is based. The demand for hearing facilities at IDRC, for both ad hoc and institutional arbitration, and for a range of ADR procedures, underlines the growing importance and popularity of London as a venue for all dispute resolution processes. So IDRC and LCIA are now seeking bigger and better premises in the immediate area.

New referrals

After a slight decline in 2001, casework referrals in 2002 came in at steady pace, producing the LCIA’s best ever year, with an increase of 24% over 2001. The 159 cases filed during the LCIA’s more consistent biennial monitoring period showed an 8% increase in arbitrations commenced in 2001/2002 as compared to the previous twenty-four month period.
Disputes were referred in 2002 from the now-familiar diversity of commercial enterprise. 13% related to disputes arising out of finance and banking, with the same proportion arising out of shareholders’ agreements in variety of commercial enterprises. 11% related to various aspects of the oil and gas and petrochemical industries; and 6% related to insurance disputes. Other categories ranged from television programming and distribution agreements to major construction and infrastructure projects; and from pharmaceutical agreements to shipping.

The proportion of the new cases filed during 2002 in which the LCIA was requested to act as either appointing authority and/or administrator in UNCITRAL-rules arbitrations, or in other arbitrations commenced on an ad hoc basis, was broadly as last year, at around 20%, supporting our view that the case for the professional administration of arbitrations remains strong, notwithstanding anecdotal evidence of a significant growth in entirely ad hoc procedures.

**Sums in issue**

In around 40% of all referrals in 2002, Claimants sought a combination of unspecified damages and declaratory relief. Of the remaining cases, in which damages were quantified in the Request, around 35% of the Claimants advanced claims of in excess of US$5million, with half of those claiming in excess of US$20million. The value of counterclaims, where advanced, typically doubled the sums in issue.

**The parties**

The nationalities of parties bringing their disputes for resolution under the auspices of the LCIA were as wide and varied as usual. Underscoring the truly international profile of the LCIA is the fact that almost 80% of the parties involved in LCIA arbitrations were not of UK nationality. The next two charts show, in percentage terms, the nationalities of all parties, Claimants and Respondents, in cases referred in 2002 and in 2001, respectively.

**2002**
The Tribunals

During the course of 2002, the LCIA Court made a total of 114 individual appointments of arbitrators, to a total of 60 tribunals. Eight of those tribunals were appointed during the year in cases that had been referred to arbitration in 2001. The remaining 52 were tribunals appointed in respect of cases commenced in 2002. The parties, or party-nominated arbitrators, nominated 61 of the 114 individuals. The LCIA Court selected the remaining 53, in cases in which there was either no express provision for party nomination, or where a party, or parties, defaulted. Of the party nominees 44 (72%) were of UK nationality. Of the Court nominees, 28 (53%) were of UK nationality. Thus, the predominance of English arbitrators remains, whether selected by the parties or by the LCIA Court, although the propensity of parties to select English arbitrators remains greater than the propensity of the LCIA Court to do so. There is no doubt that the applicability of English law, both procedural and substantive, to a high proportion of the arbitrations brought to the LCIA, combined with the preponderance of non-UK parties, accounts for the significant skew towards English arbitrators.

In addition to the English arbitrators appointed by the LCIA Court, the nationalities of arbitrators appointed during 2002 included Australian, Austrian, Belgian, Canadian, Czech, Dutch, French, German, Indian, Italian, Mexican, New Zealand, Spanish, Swedish, Swiss and US.

Contract dates

The breakdown of the dates of the contracts in dispute in year 2002 cases (where known) is shown in the next chart. Around half of new referrals for the year were in respect of contracts entered into in 2002, and in the two previous years.
Empirical Research

As the old adage has it, there are “lies, damned lies, and statistics” and the data that can be extracted from the files of one institution are unlikely reliably to establish trends in the use of arbitration; in the choices to be made between the institutional and ad hoc options; in the use by different commercial sectors of arbitration, and so forth.

I am pleased to be able to report, therefore, that IFCAI (International Federation of Commercial Arbitration Institutions), of which all of the leading arbitral institutions are members, is supporting a major empirical research project, which will seek to obtain precise information as to the total number of cases worldwide; what types of business most commonly use arbitration; how the choice between ad hoc and administered arbitration is informed and to what extent the prevalence of one or other option varies from jurisdiction to jurisdiction; reliable data as to the costs of arbitration, overall, and as between the ad valorem and hourly-rate options; in which locations arbitration takes precedence over litigation and to what extent; growth areas and trends; and so on.

It is also hoped that a common definition of “international arbitration” and common features of arbitral agreements will emerge from this research. Also, the patterns in the relationship among institutions and parties and tribunals.

LCIA members will be kept advised as the research project develops.

Conferences and Symposia

Although the core work of the LCIA is its arbitration and ADR casework, it is also renowned for its outstanding programme of symposia and conferences, which, as many members are only too well aware, are routinely oversubscribed.

2002 was another busy and successful year for LCIA conferences. There were a total of eleven during the year, comprising five one-day themed conferences in London; two symposia organised by the LCIA’s Young International Arbitrators Group (YIAG); the two traditional Tylney Hall symposia and two other Tylney-style symposia, the first held in Brussels back-to-back with the IBA’s International Arbitration Day, and the second in Durban under the auspices of the Pan-African Users’ Council.

YIAG continues to expand and their symposia have become an important debating forum.
2003 has got off to an excellent start, with a successful symposium in Sydney, again, organised jointly with IBA, and a joint LCIA/AMINZ conference in Auckland.

We owe a particular debt of thanks to the LCIA members who so willingly volunteer to chair the LCIA conferences; a pivotal and onerous role upon which the life of the LCIA symposium format depends.

In addition to its own conferences, the LCIA contributed to, and addressed, international arbitration conferences organised by other bodies in many venues, including Bucharest, Kiev, London, New York, Paris and Sydney.

Looking forward

As I write this report, the world faces turmoil in the Middle East and, in particular, the threat of war in Iraq. At the UN, nations are divided as never before over the long-standing problems of that troubled region and I have no reason to suppose that there will not be great violence afoot by the time this piece is read, however fervently I may hope to the contrary.

At its inauguration in 1892, the LCIA was heralded as a “peacemaker” and the ICC was founded, in 1919, when the horrors of the First World War were etched in the public psyche, “to create an institution that would foster reconciliation and peace through the promotion of international commerce”, with the ICC’s Court of Arbitration being established in 1923 to provide the means of resolving disputes arising out of international commerce, in the furtherance of that primary object. In 1927, similar sentiments were expressed in relation to the legal profession at the founding of the UIA.

There is little doubt that international trade brings with it a prosperity and interdependence that militates against conflict. And the clamour for inclusion in that economic community is one that I invariably encounter on my travels to developing countries.

The expansion of economic relations with the, now-approved, enlargement of the European Union, heralds greater national and individual wealth in that region and, I dare say, greater economic and political stability.

But, as the global market grows, so too does resentment and resistance by the groups which see this expansion as at the expense of our most precious heritage, the environment and by those who resent what is perceived as the burgeoning imposition of “Western values”. And I believe that these protests must be heeded in the core of their message.

There is, of course, no shred of justification for the savagery of the terrorist of any origin or circumstance. But there is a quieter and more studied resentment shared by great numbers of the impoverished and the disenfranchised, which cannot be ignored.

Whilst it may appear a conceit to suggest that the arbitrator is anything more than a servant of business, and a highly paid servant, at that, I do dare to propose that the international arbitrator is a small but vital cog in the wheel of the promotion of harmony through trade.

So, as the LCIA contemplates its own growing success in these troubled times, it remains firmly committed to the ideals espoused in London and further articulated in Paris several generations ago.

Adrian Winstanley
Director General