Director-General’s Review of 2003

Introduction

2003 was another year of seemingly undiminished activity in the field of arbitration. Many of the established institutions reported growth in their caseload, whilst strengthening their diversification into the many alternative methods of resolving disputes that are increasingly being adopted by commercial parties. In the broader academic and developmental fields, the UNCITRAL-led debate on interim measures in arbitration and, in particular, on *ex parte*, interim measures has seized the imagination of the arbitration community. Under the Presidency of Ulf Franke, the activities of IFCAI have been renewed and refocused, with an important initiative begun on the vexed question of the application of VAT/TVA to the fees of arbitrators and of administering institutions. The IBA committee has continued its work on a universal standard of disclosure for arbitrators.

I am pleased to report that, in the midst of these activities, the LCIA has seen casework referrals increase and has been consulted on a number of occasions by significant commercial groups on the drafting of private adjudication procedures for their specific sectors.

Irene Bates and her team were responsible for another excellent programme of conferences, starting with two packed events in the Antipodes in February, which were followed by the now established series of themed and sponsored one-day symposia in London and overseas; another two highly-successful Tylney Hall meetings and, for the first time, a symposium held in conjunction with ICSID, in Washington. YIAG also put on a number of well-attended symposia.

In my review of 2002, I reported that the increase in our activities was leading us actively to seek larger premises and, as the cover article of this LCIA News reports, it has taken us until early 2004 to find the right premises. So we now look forward to following up on the successes of 2003 from our newly-relocated secretariat.

New referrals

For the second consecutive year, casework referrals showed an improvement over the previous year, with an increase in 2003 of 20% over 2002. The 192 cases filed during our biennial monitoring period, showed a 21.5% increase in arbitrations commenced in 2002/2003 as compared to the previous twenty-four month period.
The types of contract dominating referrals in 2003 were a wide variety of shareholders agreements, at around 22% of the total; oil and gas and petrochemicals agreements, at around 16%; finance and banking, at around 12.5%, and insurance, also at around 12.5%. The remaining 37% of new referrals were made up of disputes in construction and infrastructure, telecommunications, maritime, agency and distribution, and others.

In what is now an established part of the LCIA’s business, we again undertook, in 2003, a variety of administrative roles in non-LCIA cases, typically providing a fundholding facility in otherwise *ad hoc* cases, or taking over an administrative role in arbitrations which had begun under the UNCITRAL Rules.

**Sums in issue**

With remarkable similarity to the case profile of 2002, Claimants, in 2003, filed for a combination of unspecified damages and declaratory relief in a little over 40% of all cases. Of the remaining referrals, in which damages were quantified in the Request, around 32% of Claimants filed claims for sums in excess of US$5 million, with almost half of those seeking more than US$20 million. As in my previous reports, I do not include in these statistics the value of counterclaims.

**The parties**

The following two charts show, in percentage terms, the nationalities of all parties, Claimants and Respondents, in cases referred in 2003 and in 2002, respectively. The two charts are remarkably consistent, with the only significant increases in the percentages of the total number of parties, as between 2003 and 2002, being in the areas of Asia Pacific and of North America. So the international credentials of the LCIA are again underscored, with less than a quarter of the parties involved in LCIA arbitrations being of UK nationality.

**2003**
The Tribunals

During the course of 2003, the LCIA Court made a total of 148 individual appointments of arbitrators, to a total of 64 tribunals. This increase of almost 30% in the total number of appointments over 2002 is attributable more to an increased number of three-member tribunals than to the increase in the number of tribunals themselves. Seventeen of those tribunals were appointed during the year in cases that had been referred to arbitration in 2002. The remaining 47 were appointed in respect of cases commenced in 2003. The parties, or the party-nominated arbitrators, nominated 97 of the 148 individuals, sometimes from lists proposed, at the parties’ request, by the LCIA. The LCIA Court directly selected the remaining 51, in cases in which there was either no express provision for party nomination, or where a party, or parties, defaulted.

64% of the arbitrators nominated by the parties, that is 62 individuals, were of UK nationality. 49% of the arbitrators nominated by the Court, that is 25 individuals, were of UK nationality. Therefore, the percentage of both party-nominated and Court-nominated arbitrators of English nationality fell in 2003, for which the figures were 72% and 53%, respectively. It remains the case, however, 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, still accounts for the inclination towards English arbitrators.

Other nationalities appointed during 2003 included Australian, Austrian, Belgian, Canadian, Dutch, Finnish, French, German, Irish, Jordanian, New Zealand, Polish, South African, Swedish, Swiss and US.

Contract dates

The breakdown of the dates of the contracts in dispute in year 2003 cases (where known) is shown in the following chart. As in 2002, almost half of the new referrals for the year were in respect of contracts entered into in the current year and in the two previous years.
Conferences and Symposia

Many LCIA members took advantage of our full symposium programme in 2003. We were also very pleased to welcome a substantial number of non-members to these conferences, many of whom later took up membership.

In February 2003, we enjoyed the warmth of the Australian climate and hospitality, starting, in Sydney, with another excellent symposium put on by the Young International Arbitrators Group. This was followed by a colloquium on the theme “Sydney as an arbitral venue”, organised by a partnership of local law firms, in conjunction with the IBA, the LCIA Asia-Pacific Users’ Council and the Law Society of New South Wales. The IBA’s 6th International Arbitration Day followed and the week was rounded off by a traditional Tylney-style LCIA symposium.

From Sydney, we decamped to Auckland, New Zealand, where the LCIA and the Arbitrators’ and Mediators’ Institute of New Zealand (AMINZ) co-hosted a conference, which was not in traditional Tylney-style, but rather a series of outstanding individual presentations and panel discussions on a broad range of topical issues. The conference was co-chaired by David Williams (Vice President of AMINZ and a Member of the LCIA Court) and Johnny Veeder (immediate-past Chairman of the LCIA Board).

The May Tylney symposium followed, where, in a departure from tradition, two of the working sessions were devoted to special topics. The first focused on the proposals of the IBA working group on standards of disclosure for arbitrators. The second was devoted to the debate on interim measures in arbitration.

In June, we put on a one-day symposium in co-operation with Clyde & Co on the theme “Arbitrating in Central and Eastern Europe – Opportunities and Pitfalls”. In September, the LCIA North American Users’ Council hosted a one-day symposium in San Francisco, immediately before the IBA’s conference. Also in September, the LCIA and DLA put on a special conference on the theme “The Marriage of Arbitration and ADR”.

The second Tylney of the year was held in October, preceded by a YIAG meeting, and we ended the year’s programme with a symposium in Washington, DC, in co-operation with ICSID, which benefited greatly from a cross-over of delegates from the traditional Joint Colloquium on International Arbitration of AAA, ICC and ICSID.

There will be another busy conference programme in 2004, on which we hope to welcome many more of our members.
Changes on the LCIA Court and Board

After four years as Chairman of the LCIA Board, Johnny Veeder passed the baton to Arthur Harverd in March 2003.

In May, we said a fond farewell to the following long-serving and loyal members of the LCIA Court: Martin Hunter, Tang Houzhi, Sergei Lebedev, Horacio Grigera Naon, Fali Nariman, Jan Paulsson, Laurence Street and Johnny Veeder. We welcomed, as their replacements on the Court, José Maria Abascal, Dushyant Dave, Judith Gill, Bernard Hanotiau, Alexander Komarov, Michael Pryles, John Uff and Wang Sheng Chang.

Looking forward

In my review of 2002, I reflected briefly on the military conflict that had just begun in Iraq and expressed the hope for a return to reconciliation and peace. As I write this report, the wreckage of the bombed trains has not yet been removed from the railway lines in Madrid.

So, whilst my report focuses, necessarily, on developments within, and projections for, the work of the LCIA, it is sobering to contemplate the wider human condition that is reflected in the seemingly unending bloody conflict among cultures and communities at loggerheads with one another.

All that those of us who work within the international commercial community can do, it seems, is to continue to be ambassadors for international co-operation and understanding, though one is, at present, hard pressed to summon up any great optimism.

Adrian Winstanley
Director General