Director General’s Review of 2005

Round-up

2005 flew by, like those summer holidays so packed with activity that they seem to be over before they begin. Certainly, it was as busy a year as any before it for the LCIA, both in casework and in membership activities.

There was considerable change on the LCIA Court during the year, with Piero Bernardini, Jim Carter, Pierre Karrer, Fathi Kemicha and Bertie Vigrass retiring in May; Vera van Houtte and David Williams retiring in July; Jean-Claude Najar retiring in September; and Cecil Abraham, Ramon Mullerat and David Rivkin retiring in October, all having completed their allotted terms of office. All of these members had actively supported the LCIA in its development over the years in which they served on the Court and we are sure that they will remain close to the institution.

With the retirement of Jean-Claude, David, Pierre and Vera, we lost four Vice Presidents, all of whom had provided tireless service in support of the LCIA secretariat.

The retirement of Bertie Vigrass marked the end of an era, as it was he who, in the early 1980’s, with the late Michael Kerr, set the LCIA on the road to the place it now holds as a thoroughly international arbitral institution. Happily, Bertie remains an active member of the LCIA Board of Directors.

Joining the Court in 2005 were Filip de Ly, Paul Hannon, Wolfgang Peter, Bill Rowley and Klaus Sachs, and, this month, Henri Alvarez, Paul Friedland, Teresa Giovannini, Michael Hwang and Rusty Park are also appointed members of the Court.

Laurent Levy was appointed a Vice President of the Court in 2005 and is joined in that role this year by José Astigarraga, Bernard Hanotiau, Francisco Orrego-Vicuña and Rusty Park.

In an unwelcome and novel distraction in 2005, the LCIA found itself the successful Claimant in a WIPO arbitration commenced by us to recover our primary domain name, which had been hijacked in cyberspace.

Casework referrals

The LCIA’s core business is, of course, the administration of casework. It is pleasing, therefore, to see the significant, if sometimes erratic, growth in this area of our business continue, with the volume of referrals in 2005 suggesting that the slight decline in 2004 was a blip in a generally upward curve.

Casework referrals were over 35% up as between 2005 and 2004. Though that apparent surge is exaggerated by the downward blip in 2004 referrals to which I have referred, the 205 cases filed during our more-informative biennial monitoring period showed a 7.5% increase in arbitrations commenced in 2004/2005 as compared to the previous 24-month period, demonstrating a genuine recovery.
Contracts out of which the cases referred in 2005 arose included: agreements for the manufacture of oil storage tanks and oil pipelines, a variety of insurance policies, agreements for the sale and purchase of carbon fuels, for terrestrial and satellite telecommunications contracts, for computer software, catering franchise agreements, numerous shareholders and joint venture agreements, construction projects, charterparties, power supply agreements and investment agreements.

**Sums in issue**

In a marked increase in such cases, the Claimants in 40% (33% in 2004) of the arbitrations referred in 2005 (excluding ad hoc cases referred for selected administrative services) sought initially unquantified damages and/or declaratory relief, though, as previously, most of these cases proved to be substantial both in terms of their monetary value and complexity, as the proceedings developed. In the remaining 60% of referrals, claims ranged between US$1 million dollars or less and US$750 million, the value of counterclaims often doubling the financial stakes.

**The parties**

The following charts show the nationality of all parties, Claimants and Respondents, in cases referred in 2005 and in 2004.

Notable changes, though probably not a trend over so short a period, are the increase in the number of UK parties from 16.5% to 21%, (restoring that proportion to where it had typically been before 2004); a decline in the proportion of West European parties (excluding the UK) from 31.5% to 22%; an increase in parties from the Asia Pacific region from 12% to 16.5% and an increase in US parties from 8% to 13%.

**2005**
In 2005, the LCIA Court made a total of 152 (150) individual appointments of arbitrators (a majority, just, as sole arbitrator), to a total of 74 (83) Tribunals. 9 (31) of these Tribunals were appointed in cases that had been referred to arbitration in 2004. The remaining 65 (52) were appointed to cases commenced in 2005.

The parties, or party-nominated arbitrators, nominated 81 (82) of the 152 (150) individuals, sometimes from lists provided, at the request of the parties, by the LCIA. The LCIA Court directly selected the remaining 71 (68), in cases in which there was either no express provision for party nomination, or where a party defaulted. 70% (68%) of the 81 (82) arbitrators nominated by the parties, that is 57 (56) individuals, were of UK nationality. Just over 50% (57%) of the 71 (68) arbitrators nominated by the Court, that is 36 (39) individuals, were of UK nationality.

So, following a consistent pattern, a higher percentage of party nominees than of LCIA Court nominees are of English nationality, underlining the fact that any English “bias” in the nationality of arbitrators has very much to do with the pragmatic selection of arbitrators qualified in the most-commonly-applicable law(s) and nothing to do with the English origins of the institution.

The nationalities of non-English arbitrators appointed during 2005 include American, Australian, Austrian, Belgian, Canadian, Chinese, French, German, Greek, Indian, Irish, New Zealand, Singaporean, Spanish, Swedish and Swiss.

The breakdown of the dates of the contracts in dispute in cases filed in 2005 (where known) is shown in the following chart. It is, perhaps, worth noting the increase in the percentage of referrals arising from contracts entered into in the current year and in the two previous years, from 50% in 2004 to 54% in 2005. This might suggest a rather more volatile period for commercial relations, or may be indicative of an increase in the number of contracts being drafted to include LCIA clauses.
**Membership and conferences**

*Users’ Councils*

It is testimony to the international standing of the LCIA that membership continues to grow steadily, year-on-year, with total membership of the five Users’ Councils (Europe, North America, Latin America, Asia Pacific, Pan Africa) now standing at 1,530; a doubling of numbers in 10 years.

Following detailed consultation with the current Officers of the Users’ Councils, work is underway on the reinvigoration of the Councils and a new Arab Users’ Council is shortly to be established.

There is to be a written Constitution, setting out the aims and objectives of the Councils; criteria for, and benefits of, membership; rules for the selection and appointment of the Officers and their terms of office; and so forth. It is hoped that the new Constitution will be approved by the LCIA Court when it meets in May 2006. The Constitution will be published in LCIA News and posted to the website in due course.
Conferences

In 2005, in addition to its two flagship symposia at Tylney Hall, the LCIA held conferences in Geneva, in Moscow, in Prague and in New Delhi, all attracting more applications for places than there were places available.

The conference programme for 2006 will start with a one-day symposium in Singapore, in the usual back-to-back event with the IBA. The spring and autumn Tylney dates are fixed for the weekends of 5 May and 8 September. We shall hold a one-day symposium in Montreal, in May, the day before the ICCA Congress, of which the LCIA is a significant sponsor. In March, the LCIA will be supporting an arbitration conference organised by Maitland in Johannesburg. In September, we shall put on a one-day symposium in Chicago, immediately before the main IBA Conference. In October, we shall hold a joint conference in Mexico with CANACO and, in Washington, in November, we shall hold a joint symposium with ICSID, following the ICSID/ICC/AAA conference in that city.

YIAG

The Young International Arbitrators Group (YIAG), which was set up some years ago by the LCIA, and which, continues to enjoy the support of the LCIA, without interference into its affairs, has proved a remarkable success. YIAG holds two or three oversubscribed symposia a year, back-to-back with the LCIA’s main conferences. Membership currently stands at 1,165 from around 80 different countries.

In September 2005, Tanya Melnyk, Mary Woollett, Torsten Lörcher and Constantine Partasides stepped down as co-chairs of YIAG and were replaced by Domitille Baizeau (Lalive), Matt Gearing (Allen & Overy), Melanie van Leeuwen (Loyens & Loeff) and Shai Wade (Vinson & Elkins).

Looking back and looking forward

The awesome forces of nature that were so catastrophically demonstrated by the tsunami that brought 2004 to an end were in further evidence throughout 2005, as Katrina, one of a record number of hurricanes whipped up in the Caribbean, battered the Gulf of Mexico and, in October, a huge earthquake in Pakistan took tens of thousands of lives in an instant.

At the seat of the LCIA, 53 travellers on the London public transport system lost their lives to suicide bombers in July; a shocking and tragic event that brought into sharp focus, for a while, some measure of the facts of daily life that still beset so many in Iraq.

There is no doubt that many of the communities of the LCIA’s members will be faced with many challenges, man-made and natural, in 2006. None of us has a crystal ball, but among the milestones predicted for the year are that one person in every five will be Chinese; that around a third of the earth’s population will be under 18 years of age; that more than one billion of us will have access to the internet; and that there will be more than 2 billion mobile phones in use.

Whatever the year may have in store for us, the LCIA will continue to try to make some small contribution to the achievement of more harmonious international relations through good policy and practice in international trade.

Adrian Winstanley
Director General