

Message de la Présidente

This is already my second message; time flies... and so do I. On the plane that brings me back from the International Bar Association meeting in Cancun, I am trying to gather my thoughts: what will I remember from this year's conference? First of all, I should confess that I had to leave early in the second day of the Committee D sessions, because my teaching commitments are calling me back home. So maybe I will miss major aspects. I am sorry about it and apologize to those who are involved for not addressing them here.

From what I have seen and heard, what will I remember? Mainly two things, of a very different nature. First there was a strange feeling about this meeting, about this trip as well. The transfer ordeal in Miami I have just gone through is just one illustration. Many would-be participants had given up and decided to stay home, probably because home is where they feel safe, but even this may be an illusion. Since the September 11 attacks, there is an ever present feeling of insecurity about our daily lives, of uncertainty about the future.

In Switzerland, in addition to the concerns about the state of the world, we worry about our country. The Swissair fleet grounded; the Gothard tunnel in flames. The ultimate symbols of Swiss performance, of Swiss quality collapsing. *Le mal suisse*, as the French press calls it, a creeping disease affecting [is there no better word?] the Swiss economy, which enlightened people have seen coming for some time now and which, to a significant extent, is due to the fact that we have not seen the competition coming and have isolated ourselves.

Arbitration is part of the Swiss economy. It is up to us to prevent it from being contaminated by the *mal suisse*. How? One answer is: by being open to the world. I must admit that last week I had the temptation – a moment of weakness – to cancel my trip to Cancun. It was so far, it took so much time, many people would cancel anyway, and the world looked so unfriendly. But then I decided this was the worst time not to go, the worst time not to be present. I went, and I am pleased that I did.

This leads me to the second thing I will remember from Cancun, which is another answer to the question of how to avoid the *mal suisse* in arbitration.

That answer is: by performing at the highest standards, and making arbitration more efficient, which was precisely the topic of the first day of the Cancun Committee D sessions. There are many ways of making arbitration more efficient, that is to save time and money while guaranteeing the quality of the process and of the outcome.

Let me emphasize just one here: the use of technology. Arbitration specialists have been slow in integrating technology into the dispute resolution process and it is clear that those who succeed in doing it in the coming years will improve efficiency tremendously. Hearing witnesses by videoconference is a tool that is relatively easy to handle and can be of great help. It is best put to use for all those secondary witnesses who sometimes travel very far to answer two or three questions. Or for witnesses who cannot travel at all. In my view key witnesses should still be heard live, whenever possible. Effective videoconferencing requires good quality equipment. In addition, the Arbitral Tribunal must set certain rules to control the conditions of the examination at the place where the witness faces the camera.

The database for document management is another means already in use in large arbitrations with many exhibits. It has its cost and its pitfalls, but can be very efficient if well handled in an appropriate case. In addition to the obvious assistance it provides when preparing submissions and witness examinations, it can in be particularly helpful to show documents when examining witnesses or presenting oral argument at the hearing. A limited database could even be set up for this purpose only.

Another emerging technology is the creation of a website for a specific arbitration. This would call for more IT input and may be less easy to manage than a document management database. Still, it looks like a very promising tool. The most complex aspect of such websites appears to be access control. Who has access to what? And how are access restrictions to be implemented? These are some of the questions that we must learn be resolved.

So much about Cancun. The night is falling over the ocean. Now, it is time for me to go to sleep, and for you to turn to the substance of this Bulletin.

Gabrielle Kaufmann-Kohler