

Editorial

Dominique Berset

International commercial arbitration is a way of solving complex disputes which proceed from the implementation of a freely concluded agreement. Parties choose to arbitrate their disagreements for all sorts of reasons, which have been, and still are, debated at length.

Beyond the legal and procedural techniques involved, arbitration is mainly a state of mind. It is the reflection of the common desire of the parties and their counsel, and of the arbitrator(s) and the arbitral institutions which possibly support them, to reach a settlement in a climate of confidence and trust. Good faith is certainly the key word of the whole mechanism. The award ultimately rendered will thus be more of a solution to a particular problem than a judgement. Its aim is in essence constructive and not decisive. Hence the importance of professional competence and the quality of the people who are involved in arbitration.

Insofar as arbitrators are concerned, this point is already the subject of discussion. Their quality is obviously a cardinal feature of effective proceedings. They are not simply required to have a sound knowledge of the applicable law, as well as the legal and practical issues at stake. Knowledge of foreign languages is also essential, together with an understanding and awareness of various different national mentalities (which themselves reflect cultural and religious peculiarities). This does not necessarily infer that all arbitrators should be from the legal profession, as so many matters submitted to arbitration relate to facts and their interpretation and not always to genuine points of law.

These necessary qualities do not only apply to arbitrators, but to counsel and practitioners involved not only in the arbitration process as such, but also in the negotiation of those agreements which contain an arbitration clause. How do parties and business people choose them? Reputation comes at the top of the list of the selection requirements, followed by professional training and experience.

It is understandable that reputation is ranked so high. It is the prerogative of those who have proved and established themselves as knowledgeable in their field. Familiar names are obviously more attractive for the business community, which often has less confidence in new names. New names, however, will not become familiar without experience, the third selection requirement mentioned above. This apparent vicious circle can nevertheless be broken, through education. Pro-

fessional training, the last aforementioned selection requirement, is indeed the way of achieving this. Improving the standards of education of the people who enter the field of international commercial arbitration is the only way of ensuring an appreciation of the realities of business.

Several institutions, schools and organizations provide opportunities for continuing education in matters related to arbitration. If specific courses are scarce, seminars and conferences are numerous and important. They provide considerable help to business people, arbitrators and practitioners alike to broaden their skills and improve their training. However, conferences and the like are sometimes somewhat ceremonial and often do not create a real dialogue among experienced persons and the increasing number of younger professionals involved in various aspects of international arbitration.

A rather more socratic approach is needed. All those who are interested in arbitration should try to come together, identify and discuss the cardinal issues at stake. This Journal is endeavouring to be the forum for such discussion in its pages. Experienced practitioners will be able to give practical accounts of their knowledge and skills, share those aspects of their know-how which could so usefully be assimilated by younger professionals. The latter will perhaps in turn try to express different approaches, tinged with a fresh or simply different sensitivity. We all have much we can learn from each other.

Finally, one ought to expect a touch of controversy in such an exchange of views. From controversy and free dialogue spring a lively and stimulating interaction, which in turn has the potential for new, constructive and positive developments. This Journal is certainly creating a forum for exchanging a wide range of views. It is now up to its readers to seize the opportunity they are offered and to take an active part in further enhancing the quality of the people involved in arbitration. Ultimately, this can only but reflect on the whole arbitration process.