

Towards a new paradigm in international arbitration. The Town Elder model revisited

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International arbitration today faces a growing list of challenges. Ironically, most of these challenges arise from the success of the process itself. Because international arbitration has proven to be an efficient and effective means to resolve international disputes, including the enforcement of awards, it has become standard to include arbitration clauses in any significant international transaction. In addition, the proliferation of bilateral investment treaties, the success of some investors in winning substantial claims under those treaties, and the changing economic environment worldwide have caused a boom in investment treaty arbitrations.

We are all familiar with the statistics showing such growth. Fifteen years ago, in 1992, the ICC had 337 new cases; in 2002, the ICC reached a high of 593 new cases. In the most recent statistics, for 2005, 521 new cases were filed, and a record total of 1,180 were ongoing at the year end. Other institutions have shown similar growth.

This growth is obviously a sign of the success of international arbitration, but it also raises new challenges. Parties come from a broader and more diverse array of countries, and they bring with them different expectations and different legal cultures. In 2005, the parties in the new ICC cases filed came from 117 different countries. Moreover, the cases are more complex. One-third of the newly filed ICC cases in 2005 involved more than two parties; 13% involved states or para-statal entities.

And finally, the amounts in dispute have grown significantly. In 1992, the ICC reported that 13% of their cases involved claims over \$10 million, and only 1% were over \$100 million. By 2005, nearly a quarter, or 23%, of the new ICC cases involved more than \$10 million, and 4% included claims over \$100 million. Even more strikingly, a recent survey by *The American Lawyer* found approximately 50 current contract and treaty arbitrations raising claims of at least \$1 billion.

These statistics and trends should make us all feel good about international arbitration and the system that so many of us have helped develop. However, each of these elements makes more difficult the parties' and arbitrators' task in conducting an efficient international arbitration.

There is no question that this growth has occurred because of the inherent advantages in the process seen by parties in international commerce. In a recent survey by PricewaterhouseCoopers and the School of

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