SHIPPING LAW CONFERENCE

ARBITRATION AND THE COURTS

15 SEPTEMBER 2011

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Introduction

1. It is a great privilege to be here. Thank you very much for inviting me (and of course Lady Justice Hallett and Mr Justice David Steel). My talk has had various titles. It was at one time (and may still be) Maritime Arbitration: Present Trends and the Future. It seemed to me that it would be appropriate to focus on the relationship between arbitration and the courts.

2. I see from the website of the Malaysia Branch of the Chartered Institute of Arbitrators, which is entitled "Champions of Dispute Resolution", that the Malaysia Branch is flourishing. I also see from the same website that there are a number of other arbitration associations in Malaysia. So I am not sure what real contribution I can make. In short, it looks as if I am redundant as usual. However, I have read the April 2011 newsletter, which underlines the importance of the relation between the courts and arbitration. It includes these two paragraphs, which give a somewhat contrasting picture:

> "The Arbitration Act came into force in 2006 and is still in its infancy. The courts have, by and large, and in the last four years developed a jurisdiction which is in line with the judicial practices in common law jurisdictions around the world. Essentially, parties involved in arbitrations in Malaysia can take comfort that the awards obtained through due and proper arbitral processes will be able to be

> enforced in the Malaysian courts. The Malaysian courts have shown that they are robust in upholding parties' bargains and maintain a high degree of comity and this is likely to increase Malaysia's desirability as a seat for international arbitrations.
>
> However, in the course of developing the jurisprudence of arbitration decisions, the courts have on occasions delivered decisions which do not sit very well with the international arbitration community and this inevitably affects Malaysia's position as the preferred venue for international arbitrations."

As I understand it the 2005 Act is in the course of being amended.

3. I had largely prepared this talk before I became aware of the 2005 Act or its proposed amendments and, indeed, before I received a most informative and interesting analysis of them both by WSW Davidson and Sundra Rajoo entitled "Malaysia Joins the Model Law Arbitration Community". It can immediately be seen from the title that the approach here is different in some important respects from that in England. Whereas, until the 2005 Act came into force in 2006, you followed our Arbitration Act 1950, it now essentially follows the Model Law. I thoroughly recommend the Davidson and Rajoo analysis, which I could certainly not match. However there are some overlapping principles between the approach of the Model Law and our Arbitration Act 1996 and I hope that what follows will at least be of some interest. Also I note that in the paper Davidson and Rajoo refer to a number of areas where English jurisprudence may of some assistance in the future.

4. I should confess at once that it is a long time since I have actually taken part in an arbitration, indeed, not since January 1993 when I became a judge. However, before that I attended a large number of different types of arbitration, both as counsel and as an arbitrator. In many of those cases David Steel (later David Steel QC) took part, either as counsel on the other side or as arbitrator. When I was the arbitrator he was often counsel and, when he was the arbitrator I was often counsel. We were in the same

chambers. At the time, nobody complained or thought that there was anything odd about the way the system worked. Or, if they did, they kept their opinions to themselves.

5. When we first started we were often engaged in salvage arbitrations under Lloyd's Standard Form of Salvage Contract. Most of the cases involved boring issues of fact. There were very few points of law, although I do remember one week in which we had (I think) three arbitrations which raised the same point of law. In one I was the arbitrator and he was counsel. In the next he was counsel and I was the arbitrator. And in the third we were counsel on opposite sides and someone else was the arbitrator. I suspect that it is rather more formalised now.

Arbitration and the courts

6. It is important for any system of arbitration to identify and make provision for the relationship between the arbitrators and the courts. In our time there has been a significant change in that relationship. It is important in this regard to appreciate that 'our time' began a very long time ago. I was called to the Bar as recently as 1965. At that time, and until the Arbitration Act 1979 many arbitration cases ended up in the courts. It was for the arbitrators to find the facts and to make an award by applying the relevant principles of law to the facts. However that was by no means the end of it in very many cases. The arbitrators could be asked to state their award in the form of what was known as a special (or consultative) case. If they refused, the court could compel them to do so. The losing party could then go to the court and argue that the arbitrator or arbitrators had made an error of law. I note in passing that, although the parties could a agree a sole arbitrator, in charterparty disputes there were often three arbitrators, one appointed by each party, who then appointed a third person known as the umpire.

7. The permission of the court was not required to challenge the award in court. Once the case reached the court it was treated like any other case in the sense that there could be an appeal to the Court of Appeal and, in some cases, to the House of Lords. Many arbitrations, especially shipping arbitrations raised question of law of some importance to the development of commerce. As a result, English maritime and commercial law developed very substantially in the 1960s and the 1970s.

8. However, since the Arbitration Act 1979 and subsequent statutes, especially the Arbitration Act 1996, the position has been very different. The special case was abolished and it became very difficult to challenge arbitration awards in the courts. The reason for the change was that it was said that parties to such arbitrations did not want their cases to be discussed in the courts. They wanted confidential arbitrations. In many systems across the world, especially in Europe, it was almost impossible to challenge an arbitrator's award. It was thought that, unless the English system made it more difficult to go to court, parties would not choose English arbitration. So the present position is that there is no appeal from an arbitrator's award on the facts and, in the absence of consent, no appeal on a question of law without the permission of the court, which (under section 69(3)) can only be granted if the decision of the arbitral tribunal on the question is obviously wrong or the question is one of general public importance.

9. Moreover, if the court gives permission to appeal, no further appeal is permitted to the Court of Appeal or, now, the Supreme Court, unless the judge in the Commercial Court gives permission and, by section 69(7) of the Act, no such permission shall be given unless the court considers that the question is one of general importance or is one which for some other reason should be considered by the Court of Appeal. As a result appeals

to the courts are infrequent and further appeals to the Court of Appeal and the Supreme Court are rare indeed.

10. There has been some discussion in recent years as to whether those restrictions should be relaxed. Although some have expressed the view that they should, there has been comparatively little dissatisfaction with the way the balance is presently struck and, although it has been suggested that research should be carried out, I do not myself think that any significant change is likely. I hope that in the course of our later discussion I may learn how different things are here now under the Model Law. As I understand it, the role of the court is even more limited than it is under our 1996 Act.

11. It can, however, readily be seen that it is critical for any legal system which provides for arbitration to give detailed thought to the relationship between the arbitrators and the courts. In England there has in recent years been a close relationship. Reading the Davidson and Rajoo paper, it seems to me that it will be important for there to be a close relationship between arbitrators/arbitration and the courts here too.

12. The starting point for any consideration of arbitration – and the same must be said for any form of what is known collectively as alternative dispute resolution – is that (like Magna Carta) it is a good thing. The principle underlying the current statute in England, which is the Arbitration Act 1996, is that arbitrations under the Act are recognised by its detailed provisions, of which the most important is the recognition of party autonomy. The judges in England are naturally well disposed towards arbitration because many of those who determine disputes in the courts arising out of arbitrations, who are mainly the judges in the Commercial Court, took part in commercial arbitrations when they were at the Bar. Many have experience of acting both as arbitrators and as

counsel – rather like Davis Steel and myself. Moreover, it is not uncommon for retired judges (again like him and me in the future) to set up stall as arbitrators – in our case perhaps in both the maritime and more general commercial fields. Recent well-known examples are Lord Hoffmann and Lord Justice Tuckey.

13. However, I must make it clear that the support of the courts for the arbitral process is not affected by the fact that some of the judges hope to become arbitrators or mediators or both after retirement. My first contact as a judge with a retired Law Lord becoming an arbitrator was an appeal from an award by three arbitrators including Lord Roskill, who had been a very successful QC and then a judge with great experience of maritime and commercial work who retired as a member of the Appellate Committee of the House of Lords, which was the final court of appeal in the United Kingdom until the creation of the Supreme Court in October 2009, just two years ago. In the appeal from Lord Roskill's award which I heard shortly after becoming a judge I put my draft judgment through the spell check and when it came to 'Roskill' it said, 'not known, try rascal'.

14. The true reason why arbitration is a good thing is that many commercial parties involved in international commerce want it because it is confidential and (it is hoped) provides a quick and effective method of dispute resolution. This can be seen from the perspective offered by an authoritative study of international arbitration carried out in 2008 by Professor Loukas Mistelis and Crina Baltag of the School of International Arbitration at Queen Mary College in the University of London. They noted that some 92% of matters referred to arbitration in the period under consideration were resolved either by agreement or after an award, without recourse to a national civil justice system; and that, where an arbitral award was made, only 11% of cases required the successful party

to take recognition and enforcement proceedings. That cannot but be a good thing.[1] These considerations apply as much under the Model Law as they do under the 1996 Act. In short, both systems recognise the importance of party autonomy.

15. As you may know, the rules of civil procedure were radically reformed in England in 1999 by the introduction of the Civil Procedure Rules ('CPR') as a result of a detailed study of the system carried out by Lord Woolf. In the post-Woolf world litigation is to be treated as the last resort and consensual settlement of disputes as fundamentally important. If arbitration (which is of course one type of ADR) is able successfully and satisfactorily to resolve disputes in this way, that must be a good thing.[2] It is no doubt for this reason that many international participants have a high regard for international arbitration. With this in mind it seems to me that the proper approach for the courts to take to international arbitration is to facilitate it and to avoid allowing satellite litigation on a plethora of issues which cause unnecessary delay and expense. This approach is I think entirely consistent with the underlying objective of the CPR, namely to deal with cases justly and proportionately. Hence the underlying approach of the 1996 Act, which has I think been a considerable success, namely (as I just mentioned) that of party autonomy – or, to put it another way 'the parties rule OK!' The same is I am sure true of the Model Law.

16. So, have the courts supported international arbitration consistently with the post-Woolf approach which favours dispute resolution through a consensual process? In general I think that the answer to that question, at any rate since the Arbitration Act 1996, is yes. Reading your 2005 Act and its proposed amendments, together with the Davidson and Rajoo paper, it seems likely to me, that the same is or will be true here. I now

[1] Mistelis et al (2008) at 2.
[2] Lord Woolf MR, *Access to Justice: Final Report to the Lord Chancellor on the Civil Justice System in England and Wales* (HMSO, London) (1996) at section I at [9].

propose to give some examples of aspects of the approach now adopted in England. I shall be interested in hearing whether it is the same here. It seems to me to be likely that it is or will be. In any event, I hope that our approach may be of interest to your courts if, as is not unlikely the same problems arise here. Perhaps they have already.

17. An example of the court's present approach to international arbitration can I think be found in the decisions of both the Court of Appeal and House of Lords in *Fiona Trust & Holding Corp v Privalov (sub nom Premium Nafta Products Ltd v Fili Shipping Company*).[3] The question was whether a dispute arising under a charterparty was referable to arbitration under the charterparty's arbitration clause, notwithstanding the purported rescission of the charter on the ground that it was procured as a consequence of bribery. The arbitration clause in the *Fiona Trust* case specified that disputes arising under the contract were referable to arbitration.

18. Not unsurprisingly there were a large number of previous authorities which were prayed in aid by the parties in support of their different interpretations of the meaning and scope of the clause. They ranged across *Heyman v Darwins Ltd*[4] to *The Antonis P Lemos*[5] and then to the well-known case of *The Angelic Grace*[6] with many others in between. The focus of much of the discussion focused on what it meant to refer to a dispute 'arising *under* a charter' and what it meant to refer to a dispute 'arising *out of* a charter'. There had been much debate in the past to the effect that, since the terms were different, they must have different meanings. The suggestion was that a dispute arising *under* a charterparty is a narrower dispute than a dispute arising *out of* a charterparty.

[3] [2007] EWCA Civ 20, [2007] 2 Lloyd's Rep 267; [2007] UKHL 40, [2008] 1 Lloyd's Rep 254.
[4] [1942] AC 356
[5] [1985] AC 711
[6] [1995] 1 Lloyd's Rep 87

Inevitably such close scrutiny over a large number of cases led to the situation with which we are all familiar with: namely complexity and technicality, which are the breeding ground of procedural and satellite litigation that distracts parties from resolving their disputes, whether by a judicial process or by arbitration or another form of ADR. In a judgment applauded in the House of Lords by Lord Hoffman (and in my humble opinion rightly applauded) Lord Justice Longmore expressed his view of this accretion of jurisprudence in this way:

> "Not all [the] authorities are readily reconcilable but they are well-known in this field and some or all are invariably cited by counsel in cases such as this. Hearings and judgments get longer as new authorities have to be considered. For our part we consider that the time has now come for a line of some sort to be drawn and a fresh start made at any rate for cases arising in an international commercial context. Ordinary business men would be surprised at the nice distinctions drawn in the cases and the time taken up by argument in debating whether a particular case falls within one set of words or another very similar set of words. If business men go to the trouble of agreeing that their disputes be heard in the courts of a particular country or by a tribunal of their choice they do not expect (at any rate when they are making the contract in the first place) that time and expense will be taken in lengthy argument about the nature of particular causes of action and whether any particular cause of action comes within the meaning of the particular phrase they have chosen in their arbitration clause. If any business man did want to exclude disputes about the validity of a contract, it would be comparatively simple to say so."[7]

19. Here we have the crucial point: ordinary business men operating in a commercial environment with expert legal advisors who enter into carefully crafted contracts which incorporated arbitration clauses might well be, to put it mildly, somewhat surprised by the nice technical distinctions honed by the courts. Nice distinctions may not, like good intentions, lead to the road to hell, but they rarely lead to the achievement

[7] [2007] EWCA Civ 20, [2007] 2 Lloyd's Rep 267 at [17]; [2007] UKHL 40, [2008] 1 Lloyd's Rep 254 at [12].

of a sensible commercial goal. Rarely do they reflect well on anyone. Lord Hoffmann put the point thus:

> "I do not propose to analyse these and other such cases any further because in my opinion the distinctions which they make reflect no credit upon English commercial law. It may be a great disappointment to the judges who explained so carefully the effects of the various linguistic nuances if they could learn that the draftsman of so widely used a standard form as Shelltime 4 obviously regarded the expressions 'arising under this charter' in clause 41(b) and 'arisen out of this charter' in clause 41 (c)(1)(a)(i) as mutually interchangeable. So I applaud the opinion expressed by Longmore LJ . . . that the time has come to draw a line under the authorities to date and make a fresh start."[8]

20. Both the Court of Appeal and the House of Lords were surely right to take this bold step. An approach which adopts a more liberal approach to the construction of jurisdiction or arbitration clauses in international commercial contracts surely represents one of the strongest indications that the English courts support such agreements. International arbitration will surely be all the stronger for it. I certainly hope so.

21. What may be called the Longmore-Hoffman approach is one which, so far as I can see, is not only supportive of international arbitration generally, but also entirely consistent with the aims which both the New York Convention and the Arbitration Act 1996 seek to achieve. To quote Longmore LJ again:

> "One of the reasons given in the cases for a liberal construction of an arbitration clause is the presumption in favour of one-stop arbitration. It is not to be expected that any commercial man would knowingly create a system which required that the court should first decide whether the contract should be rectified or avoided or rescinded (as the case might be) and then, if the contract is held to be

[8] [2007] UKHL 40, [2008] 1 Lloyd's Rep 254 at [12].

> valid, required the arbitrator to resolve the issues that have arisen. This is indeed a powerful reason for a liberal construction."[9]

22. The one-stop approach to arbitration which the *Fiona Trust* decision advocated was also supported by the Court of Appeal in *Emmott v Michael Wilson & Partners Ltd*[10]. That appeal gave rise to issues regarding the confidentiality of documents disclosed in the context of national and international arbitration. It is axiomatic that one of the central advantages of and reasons why parties resort to arbitration is the confidentiality and privacy of the process. As Lawrence Collins LJ put it in *Emmott*:

> "Parties who arbitrate in England expect that the hearing will be in private, and that is an important advantage for commercial people as compared with litigation in court."[11]

23. More significantly, as Lawrence Collins LJ noted, the principle of privacy and confidentiality was understood by the Departmental Advisory Committee on Arbitration Law's report – the report which gave rise to the 1996 Act – to be an essential feature of English arbitration: essential because, as Sir Patrick Neill QC noted, if the principle of privacy and confidentiality were to be weakened or removed, a serious threat would be posed to the success of English arbitration greater than could otherwise be conceived.[12]

24. In rehearsing these points Lawrence Collins LJ simply reiterated a long standing principle of arbitration proceedings; a principle which had earlier been restated by Mance LJ (as he then was) in *Economic Department of*

[9] [2007] EWCA Civ 20, [2007] 2 Lloyd's Rep 267 at [19].
[10] [2008] EWCA Civ 184; [2008] 1 Lloyd's Rep 616
[11] [2008] EWCA Civ 184; [2008] 1 Lloyd's Rep 616 at [62].
[12] [2008] EWCA Civ 184; 2008] 1 Lloyd's Rep 616 at [61].

City of Moscow v Bankers Trust Co.[13] It is a principle which is supported by CPR 62.10 (3) (b).

25. The Court of Appeal in *Emmott* was faced with a question as to the proper approach to take to this principle. It explicitly acknowledged the importance which English law placed on confidentiality in the context of international arbitration. As Lawrence Collins LJ noted, the English court's approach to this aspect of arbitration proceedings had made a 'major contribution to the development of law of international arbitration.'[14]

26. After a thorough review of the jurisprudence both Lawrence Collins and Thomas LJJ arrived at a decision which, on the one hand, recognised the fundamental importance of privacy and confidentiality but, on the other hand, did so whilst properly balancing it against the need in certain limited circumstances to require disclosure in the public interest. Thomas LJ summarised the law in these terms:

> "In my judgment the content of the obligation may depend on the context in which it arises and on the nature of the information or documents at issue. The limits of that obligation are still in the process of development on a case-by-case basis. On the authorities as they now stand, the principal cases in which disclosure will be permissible are these: the first is where there is consent, express or implied; second, where there is an order, or leave of the court (but that does not mean that the court has a general discretion to lift the obligation of confidentiality); third, where it is reasonably necessary for the protection of the legitimate interests of an arbitrating party; fourth, where the interests of justice require disclosure, and also (perhaps) where the public interest requires disclosure."[15]

[13] [2004] EWCA Civ 314; [2005] QB 207 at [2] and [30].
[14] [2008] EWCA Civ 184; 2008] 1 Lloyd's Rep 616 at [66].
[15] [2008] EWCA Civ 184; 2008] 1 Lloyd's Rep 616 at [107].

27. The Court went beyond providing a summary of where the case law stands at the moment on the issue of in what limited circumstances the courts will overreach the very strong presumption in favour of the principle of privacy and confidentiality, as both Thomas and Lawrence Collins LJJ tentatively, although the former perhaps less tentatively than the latter, looked at the issue of whose responsibility it was to interpret the ambit of the principle. They both noted that the obligation to maintain privacy and confidentiality had arisen by way of an implied term in arbitration agreements. While they did not need to decide the issue for the purposes of the case, they both took the view that it was not for the courts to assess the ambit of that implied term, but rather that, as Thomas LJ put it: "any dispute as to its scope would fall within the scope of the arbitration agreement."[16] This seems a sensible approach and one which is, once more, consistent with the idea that the arbitrations provide a one-stop shop for consensual dispute resolution.

28. I note in passing that I was myself involved in the Court of Appeal in an appeal from Jeremy Cooke J in a case which is called *C v D* [17], which was a claim by insurers against re-insurers under a contract with a Bermuda form arbitration clause in it. Longmore LJ was also a member of the court. The arbitrators made an award in favour of the insurers and the insurers subsequently sought an injunction against the reinsurers restraining them from seeking to set aside the award or seeking a declaration of non-liability in New York. I am concerned here, not with the underlying merits of the appeal, but only with confidentiality and anonymity. The judge was persuaded to anonymise the report of his judgment. We were asked to do the same, in each case on the basis that, although it was recognised that decisions of the Court of Appeal should be given in public, the confidentiality of the subject matter should so far

[16] [2008] EWCA Civ 184; 2008] 1 Lloyd's Rep 616 at [110].
[17] [2007] EWHC 1541 (Comm), [2007] 2 Lloyd's Rep 367; [[2007] EWCA Civ 1282, [2008] 1 Lloyd's Rep 239.

as possible be protected in order to protect the parties' agreement to that effect in the contract. We ultimately agreed to do that, although we were concerned not to jeopardise the principle that, save in exceptional (perhaps very exceptional) cases the Court of Appeal should not operate in private.

29. The primacy of the arbitration agreement was also upheld by the Court of Appeal in *Sumukan Ltd v The Commonwealth Secretariat*,[18] in which issues arose as to the independence of the arbitral panel. The suggestion was made that the common law doctrine of de facto authority could be relied on to cure an invalid appointment of an arbitrator. In order to accept the application of this doctrine to arbitration proceedings would have required the Court, of which I was a member, to accept that an arbitral tribunal was in character analogous to a court of law. While it of course is similar to a court of law in a number of respects, to accept that the common law doctrine applied to arbitral tribunals would have been a step too far. The constitutional basis of courts of law differs fundamentally from the contractual basis of arbitration proceedings and the purpose of the two is markedly different. Courts exist to determine rights according to law; arbitrations arise consensually by agreement to resolve disputes and do so according to the terms of the agreement.[19]

30. It is clear from these cases that the court's general approach to arbitration proceedings is that they are a means of consensual dispute resolution which arise from the private agreement of contracting parties. It is sometimes the case however that parties do not want to stick to their agreements. The court's traditional approach has been that, where parties have agreed to a particular jurisdiction, or to arbitration in a particular jurisdiction, it would grant or refuse a stay or anti-suit injunction in

[18] [2007] EWCA Civ 1148
[19] [2007] EWCA Civ 1148 at [34] & [50 – 52].

favour of that jurisdiction, or in favour of arbitration in the previously agreed forum, unless there were strong reasons for not doing so: see eg *The El Amria*[20], *Welex AG v Rosa Maritime Ltd*[21] and many other cases. The Court has thus approached such questions perhaps more flexibly, i.e., on a discretionary basis, than it would with other contractual terms, to which the approach was, as we used to say, *pacta sunt servanda* (which of course means that agreements must be kept). That being said the Courts were in appropriate cases willing to exercise that discretion to support the terms of the arbitration agreement: see, for instance, the decision in *Through Transport Mutual Insurance Association (Eurasia) Ltd v New India Assurance Co. Ltd*[22] which held that it was perfectly permissible to impose an anti-suit injunction to restrain proceedings issued in breach of an arbitration agreement notwithstanding the regime created by the Brussels Convention and Regulation 44/2001. That decision was reversed as a result of a reference to the Court of Justice of the European Union ('EU') in *West Tankers Inc v Allianz SpA (The Front Comor)*[23]. However that decision applies only in EU cases and does not reflect the general approach of the English courts, which is very supportive of arbitration.

31. I would like to say a very brief word about enforcement, which is of considerable importance. It is obvious that there is no point in a party spending time and money obtaining a judgment in a civil action or in obtaining an arbitration award unless the judgment or award can be enforced. One of the advantages of international arbitration is correctly said to be that, provided that the relevant state (like both the United Kingdom and Malaysia) is a party to the New York Convention, it is easier to enforce foreign arbitration awards than foreign judgments. As I

[20] [1981] 2 Lloyd's Rep 119
[21] [2003] EWCA Civ 938;[2003] 2 Lloyd's Rep 509
[22] [2005] 1 Lloyd's Rep 67
[23] [2009] 1AC 1138

understand it, this is one of the principal reasons for parties to agree arbitration clauses in their contracts.

32. What then is the English court's general approach to enforcement? Subject to the express terms of the 1966 Act and of the New York Convention, it supports attempts to enforce awards. While only a small number of arbitral awards require enforcement proceedings it is important that the court takes a robust approach to such proceedings. Robust in the sense that the courts should wherever possible seek to resolve such proceedings as efficiently and economically as possible and, of course, consistently, with the provisions of section 66 of the 1996 Act.

33. The one area of significance in which the English courts have refused to enforce an arbitration award is where they have upheld an objection that "the arbitration agreement was not valid … under the law of the country where the award was made" within the meaning of section 103(2(b) of the 1996 Act, reflecting ArticleV(1)(a) of the New York Convention: see the recent decision of the Supreme Court (to which I was a party) in *Dallah Real Estate Tourism Holding Company v The Government of Pakistani*.[24] The court had there held that the Government was not a party to the arbitration agreement. The Supreme Court held that it was for the court to determine that question for itself. I shall no doubt be corrected if I am wrong but, since Malaysia is a party to the New York Convention, it seems not unlikely that it would approach a problem like this in the same way.

Maritime arbitration

34. The relationship between the courts and the arbitrators is really no different in maritime arbitrations from other types of arbitration. There

[24] [2010] UKSC 46

has been something of a bonanza in the world of maritime arbitration since the summer of 2009 when spot rates of charter hire plummeted, leaving charters with long terms charters paying far above the new market rates and leaving shipowners who had ordered new ships or who had exercised options to buy ships at what now looked to be very inflated prices. These were the ideal conditions for dispute and there have I understand been many arbitrations. In some of them awards of very large sums of money have been awarded. The LMAA (and no doubt the LCIA and the ICC) have been very busy. I am not sure whether I should say: long may it last or not. I suppose it depends how long it is before I retire.

35. One of the reasons why in the past England has been treasonably successful as a seat of arbitration and why the English High Court has been reasonably successful as a forum for the resolution of international commercial disputes is that many standard forms of charterparty have an English arbitration clause or an exclusive English jurisdiction clause in them. Many of them also have terms which provide that they are governed by English law. To the same end, I would suggest that it would be desirable for the lawyers and arbitrators here to persuade large Malaysian companies to put similar jurisdiction clauses in their contracts – and perhaps Malaysian law clauses too. Perhaps they do so already. Or I suppose you could have English law clauses and Malaysian arbitration or jurisdiction clauses and then allow people like David Steel and me act as arbitrators here in the future. However, I realise that you may think that that is a step too far.

36. In the meantime it is a great pleasure to be here. Thank you for being so patient.