

**Report on Attendance at “English Law Week” in Mexico City and  
“English Law Day” in Bogota – September 2019**

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1. In early September 2019, I attended “English Law Week” in Mexico City, Mexico and “English Law Day” in Bogota, Colombia. Both conferences were organised by the Bar Council and the Law Society, in partnership with the local chambers of commerce and local bar associations in Mexico and Colombia.
2. The purpose of each conference was to promote the use of English law to Latin American lawyers and to promote London as a dispute resolution centre for international commercial disputes, as well to forge links between lawyers from each jurisdiction. The conferences were a great success. In this report, I offer some reflections on both conferences.
3. Last year was the inaugural “English Law Week” in Mexico City. This year’s conference built upon the connections which had evidently been forged between lawyers in the UK and Mexico over the previous year. This year was also the inaugural “English Law Day” in Bogota and many of the delegates to had attended the conference in Mexico City took the opportunity to extend their trip and to visit Colombia so as to forge new links with lawyers from that jurisdiction and to promote English law and London as an international dispute resolution centre.
4. The delegates at the conference included lawyers in private practice from both jurisdictions, some lawyers for the Mexican and Colombian governments and some in-house lawyers for corporate firms based in Mexico and Colombia. The conferences were therefore a good opportunity to speak with a diverse range of lawyers, each of whom offered different perspectives. Both conferences followed a similar structure and featured similar panels and speakers. I spoke on the Energy panel and the Insurance & Reinsurance panel at both conferences.
5. My talk on the Energy panel was entitled “Investment Disputes in the Renewable Energy Sector: Lessons to Learn from Recent Arbitrations under the Energy Charter Treaty and Bilateral Investment Treaties”. In this regard:
  - (1) I spoke about the many recent arbitral awards which had been issued by investment tribunals against Spain and Italy arising from fundamental changes made by those States to the regulatory regime for solar energy and the withdrawal of incentives for operators of solar power plants.
  - (2) Over the past few years, Mexico and Colombia have witnessed a significant rise in the amount of renewable energy being generated from solar plants and wind farms. Mexico and Colombia are also parties to many international

investment treaties which may prompt claims from foreign investors if Mexico or Colombia were to change local regulations of renewable energy.

(3) After giving my talk, and speaking with the lawyers from Mexico and Colombia at the conference, it was clear to me that both States faced a number of unique challenges in connection with the development of large-scale infrastructure and energy projects. In particular:

(a) Corruption still blights the construction and operation of energy projects in both Mexico and Colombia. However, it is clear that the Governments of both countries are taking concerted action to eradicate corruption. Moreover, and as we discussed on the panels, if an international dispute arises in connection with an energy project, international arbitration proceedings may also have a role to play in the fight against corruption if corruption allegations are pursued by one or other of the parties, as illustrated by a number of recent arbitral awards.

(b) Another problem is that when energy projects are constructed in Mexico, there is often inadequate community engagement and consultation with owners of Mexico's ejidos. Ejidos are areas of communal land owned collectively by local farmers. Ejido land is often used in the construction of oil & gas pipelines and power plants. One of my co-panellists on the Energy panel in Mexico City with experience in this area (María de las Nieves García-Manzano) spoke about the importance of ensuring adequate consultation with the owners of ejidos to avoid domestic and international disputes in this regard.

6. My talk on the Insurance & Reinsurance panel was entitled "Reflections on the Appointment of Arbitrators in Insurance Disputes". In this regard:

(1) I spoke about the recent decision of the Court of Appeal in *Halliburton Co v Chubb Bermuda Insurance Ltd* [2018] EWCA Civ 817, [2018] 1 WLR 3361 which involved a challenge to an arbitrator who had been appointed in multiple overlapping insurance arbitrations arising out of the same subject matter, on the basis of alleged apparent bias. The Court held that the mere fact that an arbitrator accepts appointments in multiple references concerning the same or overlapping subject matter with only one common party does not of itself give rise to an appearance of bias; something more is required.

(2) The Court of Appeal's pro-arbitration decision was of interest to Mexican and Colombian lawyers because the domestic arbitration laws in both jurisdictions are based upon the UNCITRAL Model Law and both contain a similar provision allowing parties to challenge the appointment of an

arbitrator on the grounds of apparent bias. An appeal against the Court of Appeal's decision is currently pending and so there was much discussion about whether the Supreme Court might adopt a different approach.

- (3) One of the key messages which my co-panellists and I sought to convey on the insurance & reinsurance panels at both conferences was that London was a good place to resolve any insurance dispute by reason of the world-class legislative framework for arbitration, the strong institutional support for arbitration by many arbitral institutions, and the deep pool of arbitrators, lawyers and experts who can provide assistance in any such dispute. Furthermore, we spoke about the recent developments in insurance made under English law in the form of the enactment of the Insurance Act 2015.
7. Inevitably, Brexit was one of the key discussion points at both conferences. It was clear that the Mexican and Colombian lawyers were taking a strong interest in the latest developments and the state of Britain's negotiations with the EU. However, I gained the sense that despite the current levels of uncertainty, lawyers advising commercial parties in Latin America were still open to the idea of having their international contracts governed by English law and choosing London as a seat of their arbitration.
8. Another key discussion point at both conferences was explaining the role of a barrister to lawyers from Mexico and Colombia who were not familiar with the split profession in England & Wales. The standard refrain that "barristers appear in court but solicitors generally do not" is fine so far as it goes. But in my opinion, as a profession, we must do more to explain clearly to foreign lawyers the unique services which barristers can offer to foreign clients engaged in international commercial litigation (*e.g.* engaging a barrister for discrete parts of the case such as the preparation of pleadings; or engaging a team of barristers to work on different parts of a large case).
9. It was a privilege to speak at both conferences and to meet many of the interesting Mexican and Colombian lawyers who attended the conferences. Both conferences were a success and I wish to extend my particular thanks to Stephanie Brown, Ben Stevenson, Christian Wisskirchen for all of their assistance in ensuring that the conferences ran smoothly. I also wish to thank COMBAR and the Bar Council Scholarships Trust for their generous support which enabled me to attend the conferences. I look forward to continuing my professional engagement with the Latin American region and to attending future conferences in this region.

**Mark Tushingham**

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