Kluwer Arbitration Blog

International Law Talk Podcast and Arbitration: What Data Tells You About International Commercial Arbitration?, In Conversation with Monique Sasson

Leila Kazimi (Assistant Editor) · Friday, June 10th, 2022

International Law Talk is a series of podcasts through which Wolters Kluwer provides the latest news and industry insights from thought leaders and experts in the fields of International Arbitration, IP Law, International Tax Law and Competition Law. Here at *Kluwer Arbitration Blog*, we highlight the podcasts focused on international arbitration.

In this latest episode, Prof. Dr Maxi Scherer, General Editor of the Journal of International Arbitration (JOIA) interviews Dr Monique Sasson, one of the editors of the **Journal of International Arbitration Special Issue on Empirical Work in Commercial Arbitration,** together with Dr Crina Baltag, Roger P. Alford, Matthew E.K. Hall. The Special Issue also includes articles authored by Prof. Loukas Mistelis, Prof. Dr Maxi Scherer, Dr Ole Jensen, Giammarco Rao, Laurence Shore, Vittoria De Benedetti, Mario de Nitto Personè, Cecilia Carrara, Elina Mereminskaya, Ioana Knoll-Tudor, Arthur Dong, and Alex Yuan.

The podcast discussion considers and explores "*What Data Tells You About International Commercial Arbitration?*", namely:

- **First**, the reasons why the empirical research study has been commenced, why "data is the new gold", and research based on data has become a hot topic in recent years. In addressing these questions, Monique Sasson highlighted that we have seen various empirical research data in investment arbitration, which enable users to predict possible outcomes of certain arguments. At the same time, such tendency is not visible in the commercial arbitration setting, where there is

more “anecdotal evidence”, i.e. unverifiable and unquantifiable information, originating from “each other’s stories”.

- **Second**, how the empirical research study is structured and what is comprised in the dataset. The dataset is composed of judicial decisions rendered in setting aside and enforcement actions, more precisely 504 and 553 respectively, covering the time frame of the last ten years (January 2010 – January 2020). The judgments originated from 74 jurisdictions, with 64% of which reflected the practice of 9 jurisdictions, namely Germany, the United States, Switzerland, Spain, the United Kingdom, the Netherlands, France, Brazil, and the People’s Republic of China. The majority of these cases concerned arbitral awards in cases administered by institutions – over 100 arbitral institutions -, whereas *ad hoc* arbitrations constituted a smaller “fraction” of the data.
- **Third**, what was done to the dataset and how it was coded. The grounds for coding the dataset were divided into 19 groups for the setting aside and enforcement data. For the setting aside data, the grounds were based on Article 34 of the UNCITRAL Model Law. While for the enforcement data, the coding was based on Article V of the New York Convention.
- **Fourth**, what the general and specific findings of the empirical research study were. Among other things, some of the general conclusions, which Monique Sasson has noted to be “expected conclusions”, included the finding that the setting aside application success rate is 23%. At the same time, in the enforcement proceedings, such attempts are successful in 73% of cases.
- **Fifth**, the findings of the research conducted by Prof. Dr. Maxi Scherer and Dr. Ole Jensen with respect to the grounds for invalidity of the arbitration agreements in 171 decisions. The named decisions were coded with respect to the grounds for invalidity invoked in the setting aside or enforcement proceedings. Some of the “surprises” related to the argument on formal invalidity of the arbitration agreement: although it is believed that it is one of the most frequently invoked grounds, the data does not confirm that. The data showed that this ground was relied upon only in 9.3% of cases. On the other hand, the two of the most “successful” grounds for the challenge were that (i) the arbitration agreement did not come into existence or was not applicable (36.5% success rate), and that (ii) one of the parties did not sign the arbitration agreement (42% success rate). Finally, Prof. Scherer highlighted that there is a mismatch between the frequency in which the grounds for challenge are invoked and their success rates.

https://arbitrationblog.kluwerarbitration.com/wp-content/uploads/sites/48/2022/06/Trailer.mp4

Listen to the discussion: *What Data Tells You About International Commercial Arbitration?, In Conversation with Monique Sasson.*

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This entry was posted on Friday, June 10th, 2022 at 2:59 pm and is filed under Arbitration Agreement, empirical data, Empirical Research, Enforcement of an arbitration clause, International Commercial Arbitration, International Law Talk, Kluwer Podcast, Public Policy, Set aside an arbitral award
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