

Kluwer Arbitration Blog

ICCA 2014. Arbitral Institutions Are Expanding, But Are They Missing the Point?

Quinn Smith (Gomm & Smith) · Friday, April 11th, 2014

In the Justice Stream of Monday, 7 April, a panel of representatives from various arbitral institutions started by addressing the premise as to whether “Arbitral Institutions Can Do More to Further Legitimacy.” They finished grappling with a potential extension of this premise to its outer limits.

For many users of the arbitration process, the institution can be the source of scorn, praise, and mystery, depending on the context of the case and the client’s response to the decisions rendered. Many times, the institution comes under fire for an arbitral appointment, its handling of a preliminary procedural question, and its role in educating and promoting arbitration. Indeed, some of this criticism comes from an allegation of pro-Western bias, or perhaps an anti-developing country tack. Publicly, ICSID invariably receives the majority of the attention. Rightly or wrongly, the publication of decisions and awards, the size of the cases, and the political component to the disputes makes the institution an easy mark for commentary, but the final question posed by the moderator, Salim Moollan, best encapsulated the inherent tension underlying the legitimacy concerns contained in the premise: if arbitral institutions share a not-for-profit mission, should they not join together to forward that goal, putting aside the duplication of effort inevitably resulting from multiple initiatives aimed at the same locations?

Nassib Ziadé laid out a powerful argument for collaboration between Western institutions and those in the developing world, resulting not only in a transfer of knowledge but culminating in independence for the local institution. Mohamed Abdel Raouf addressed the issue of costs, which has been the focus of institutions for some time. Supporting the statistics, Raouf and many of the others on the panel shifted the focus to the parties, who for the most part control costs through counsel and expert fees. Answers to a prior survey completed by the institutions drove the majority of the discussion, and with a collection of the top officials for many of the institutions, each person made meaningful contributions. But ultimately, the most new ground was broken with the final question.

Undoubtedly, many institutions generate strong revenues for themselves or their affiliated organizations. Those revenues only increase with the growth and array of conferences and the aggressively rising costs to attend. Institutions have also moved strongly into new markets, following the new disputes that will certainly arise. But as stated by Moollan, the problem is not the rules. UNCITRAL has led the way with constantly improving iterations of model rules and laws. The arbitral institutions contain to tweak their rules, but decades of practice and decisions

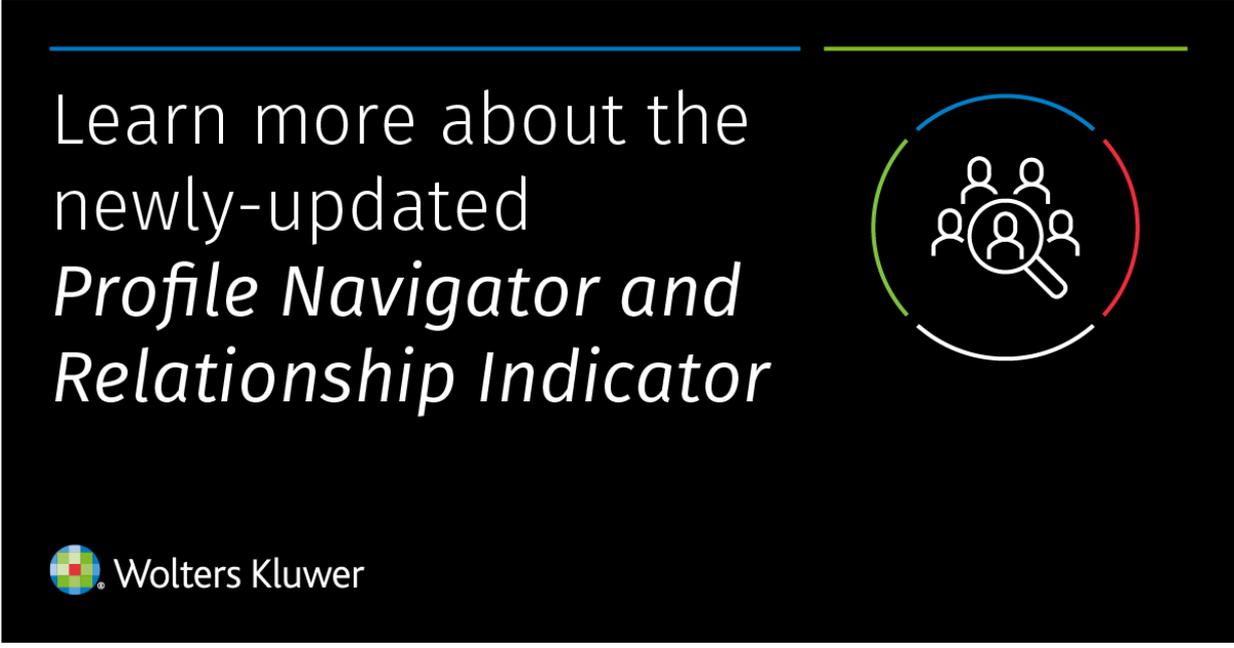
have created a significant degree of harmony and quality in the various parts of the world. Indeed, a new institution need only turn to the internet to find free copies of rules resulting from years of work and analysis. But institutions have yet to band together and begin building bridges that do not involve refashioning the same parts by different people. If nothing else, this panel at least raised the question for future conferences to answer.

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This entry was posted on Friday, April 11th, 2014 at 5:21 am and is filed under [Arbitration, Arbitration Institutions and Rules, ICCA Miami 2014](#)

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