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Empirical Research in International Arbitration: A Perspective from Singapore Drawing from the Discussion at the 2023 ASIL Annual Meeting

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Knowledge and information with respect to international dispute resolution processes are mostly limited to our own experiences, the jurisdictions we operate in, or the cases we deal with in various roles; the rest is [anecdotal evidence](#). But what are the preferences of the users and what are their experiences like globally? Do the international dispute resolution systems meet their expectations? Are the systems developing in the right direction? Empirical evidence can provide ample information on this important subject. The growing importance of [empirical research](#) in international arbitration was discussed by a panel that was hosted by the [Dispute Resolution Interest Group](#) of the American Society of International Law (ASIL) during the recent [2023 ASIL Annual Meeting](#) (ASIL DRIG Panel). The Panel on “Empirical Research in International Arbitration” was moderated by [Dr Remy Gerbay](#) and [Simon Batifort](#) and featured [Dr Maria Fanou](#) and [Mariam Gotsiridze](#). The panel discussion delved into the questions of design, implementation, and impact of empirical research in international arbitration focusing on two surveys as “case studies”: the [2021 Queen Mary University of London \(QMUL\) International Arbitration Survey](#) (the twelfth Survey of the [School of International Arbitration \(SIA\)](#) and the fifth in partnership with White & Case – hereafter referred to as the [2021 QMUL/W&C Survey](#)) and the latest [International Dispute Resolution Survey of the Singapore International Dispute Resolution Academy \(SIDRA\)](#) which was conducted in 2022 (hereafter referred to as the [2022 SIDRA Survey](#)).

This post presents some of the key findings of the second edition of the 2022 SIDRA Survey. It draws inspiration from the panel discussion and addresses (from the perspective of SIDRA and reflecting this author’s views) the questions of whether there is a correct way to conduct empirical research, and how empirical research can impact the practice of arbitration.

An Overview of SIDRA’s Empirical Work and the Key Findings of the 2022 SIDRA Survey

SIDRA conducted its first survey in 2019. Generally, the aim of the SIDRA Surveys is to understand user preferences and expectations in cross-border dispute resolution covering a wide spectrum of dispute resolution (DR) mechanisms: international commercial arbitration, mediation and litigation, as well as investor-state dispute settlement (ISDS) and mixed mode (hybrid) dispute resolution, avoiding looking at any single mechanism in isolation. The survey is entirely user-

centric and only draws responses from external counsel, in-house lawyers, corporate executives, and government lawyers. It collects views based on user experiences and not just user preferences, focuses on the dispute resolution mechanisms for cross-border disputes only, and is distributed internationally in all six UN languages.

The second edition of the SIDRA Survey was conducted in 2021-2022 and the final report was issued in August 2022. In addition to all main aspects of dispute resolution (choice of DR mechanisms, seat/location of proceedings, DR institutes, etc.), the 2022 SIDRA Survey collected data on user experiences and satisfaction with technology in international dispute resolution, which has become an especially important consideration in the post-COVID era. The next (third) edition of the SIDRA Survey is [currently open for contributions](#).

The majority of respondents to the 2022 SIDRA Survey were least satisfied with factors such as speed and costs in arbitration, thus, leading to the conclusion that arbitration is no longer perceived as a fast and cheap option for commercial disputes. The 2022 SIDRA Survey noted that the preservation of business relationships and the level of indirect costs experienced by a client is increasingly gaining importance as one of the key considerations in choosing a dispute resolution mechanism.

The 2022 SIDRA Survey also showed increased use of technology in international dispute resolution. In the 2022 SIDRA Survey, the large majority of respondents identified the following technologies as either “extremely useful” or “useful”: platforms for conducting virtual/online hearings, cloud-based storage systems and e-discovery/due diligence as well as negotiation support or automated negotiation tools for mediation.

In addition, the respondents in the 2022 SIDRA Survey demonstrated an increased interest in mediation both in commercial and investor-state dispute settlement. User satisfaction with respect to such key factors as speed, cost and preservation of business relationships is much higher for mediation than for arbitration or litigation. While arbitration remains the most favourable mechanism in ISDS, 24% of the respondents ranked mediation as the second most favourable mechanism. This is a significant improvement compared to the 2020 SIDRA Survey results where mediation was only a third choice after arbitration and litigation.

Is There a Right Way of Doing Empirical Research?

Quantitative as well as qualitative analysis are considered important components of the SIDRA Surveys. Qualitative data facilitates a more accurate reading of the quantitative data and contributes to better understanding respondent answers. SIDRA conducts qualitative interviews with the respondents after the survey results are released, and issues additional reports and publications based on the answers of the respondents. Qualitative interviews as well as additional qualitative research allow for a better understanding of certain survey results and how they are explained by current developments. It may help demonstrate whether user views correspond to the existing perceptions, criticism or proposed reforms in the field. For example, in the ISDS section of the 2022 SIDRA Survey, the respondents considered finality and direct enforceability of awards as the most important factors in investor-state arbitration; this is an important consideration in terms of one of the pillars of systemic reform options discussed in UNCITRAL Working Group III – the appellate mechanism.

Another important factor is the design of the survey. Respondents targeted by all the SIDRA Surveys are typically stretched for time and, therefore, the survey should be simple and straightforward, and provided in a form that is most user-friendly, easy to access and navigate. The category of surveyed respondents shall be carefully identified; and respondents shall ideally share common interests, similar experiences, similar capacities, etc. Mixing views of respondents with varied perspectives, goals and experiences might not give the most accurate picture in a surveyed industry/area.

The SIDRA Surveys limit the pool of respondents to the users only; thus, in the 2022 SIDRA Survey, 22% of the respondents were client users (corporate executives, in-house counsel, and government lawyers) and 78% were external counsel (dispute resolution lawyers and corporate lawyers). Even in this narrowly defined pool, sometimes the responses differed among the two sub-categories of the respondents. Therefore, while presenting one aggregated result for all users, SIDRA also presents responses for the two user categories separately. For example, under the 2022 SIDRA Survey, the view of the two categories of users significantly differed in areas such as costs and diversity:

- client users were less satisfied with costs in arbitration (15%) than external counsel were (32%); and
- client users found diversity more important (62%) in selecting arbitrators than external counsel did (42%).

The number of surveyed respondents and their level of experience as well as representation in terms of geography, industry, culture, legal systems, etc. are other important considerations when it comes to the pool of respondents. The survey results are determined by the respondents' contributions; and insufficient respondent contributions or incomplete representation might lead to results that do not necessarily represent general trends and developments, or the prevailing views. Generally, it is important to be transparent about the number of respondents, their experience and representation in terms of industry, jurisdictions, legal systems, etc.

In the case of the 2022 SIDRA Survey, the users came from 25 jurisdictions. The majority of the respondents were from Asian countries – most of them originating from Singapore (42.4%). Therefore, the 2022 SIDRA Survey clarifies this profile to explain certain trends which might be (but not necessarily are) determined by geographical representation of the respondents. For example, under the 2022 SIDRA Survey, Maxwell Chambers, Singapore, continues to be the most commonly used hearing centre for international commercial arbitration (78% of respondents) followed by International Dispute Resolution Centre in London and New York International Arbitration Center. The 2022 SIDRA Survey clarifies that this might be explained by geographical profiles of respondents. The users of the 2022 SIDRA Survey should be sensitive to these factors and come to their own conclusions as to the suitability of such data for their respective purposes.

How Can Empirical Research Contribute to International Dispute Resolution?

There are many ways in which empirical evidence can make an impact in international dispute resolution. Such an impact may concern changes in policy and rulemaking, as well as the handling of actual cases. For example, data on the preferences, experiences, and level of satisfaction of the users can be effectively considered by counsel and arbitral institutions to make their services, rules,

and procedures more effective and more responsive to users' needs. Arbitral institutions could take account of the fact that the respondents of the 2022 SIDRA Survey considered efficiency (91%), institutional rules (emergency arbitrator, expedited procedure, consolidation, joinder, etc.) (91%) and costs (78%) as "important" or "absolutely crucial" factors in choosing arbitral institutions. Data collected through the surveys could also add legitimacy to certain newly devised procedures or emerging principles of law that could be used by arbitral tribunals to deal with abusive practices, to ensure an efficient process and to deal with other shortcomings of the international dispute resolution system.

Last but not least, empirical research could be relied on as evidence for policy makers to implement certain reforms or assess the effectiveness of existing reforms and regulations. For example, information on what users considered to be critical factors for the top arbitral seats could influence the arbitration laws of a particular seat. Also, in the 2022 SIDRA Survey, the respondents were asked to name developments that could improve the dispute resolution procedures in ISDS. The majority of the respondents (76%) suggested "increased pool of experts" as one of the most important developments, while only a small percentage supported the establishment of an "appeals mechanism" (38%). Noting the limitations above in terms of representativeness of the sample, such data could nonetheless be an important consideration for the current discussion on ISDS reform.

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This entry was posted on Monday, June 26th, 2023 at 9:21 am and is filed under [Empirical Research](#), [International arbitration](#), [Queen Mary- White & Case Survey](#), [Singapore International Dispute Resolution Academy](#), [Surveys](#)

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