

Kluwer Arbitration Blog

Atlanta International Arbitration Society's (AtlAS) 12th Annual Conference

Shashaank Rajaraman (Emory University School of Law) · Saturday, October 21st, 2023

On October 2-4, 2023, the [Atlanta International Arbitration Society](#) (“AtlAS”) hosted its 12th Annual Conference, in Atlanta, Georgia, USA.

Attendees from around the nation were treated to engaging, collaborative discussions and panels organized by AtlAS, the [Institute for Transnational Arbitration](#) (“ITA”), and the [American Arbitration Association](#) (“AAA”). [Christopher Smith](#) (Senior Associate, King & Spalding LLP and AtlAS Vice President), [Meredith Craven](#) (Associate, White & Case LLP and Young ITA Representative), and [Wheaton Webb](#) (Associate, Troutman Pepper LLP) served as Co-Chairs for the conference.

Day 1

On October 2, law students, young lawyers, and seasoned professionals convened on Kilpatrick Townsend & Stockton’s midtown office for the first day of the conference with two Young Practitioners Panels organized by the Young ITA, ICC Young Arbitration & ADR Forum (“ICC YAAF”) and AtlAS’s Young Practitioner Group. The conference then continued with two evening “tertulia” sessions – highly interactive, small group discussions of a given topic sessions – organized by AtlAS.

Mr. Smith and Ms. Craven delivered introductory remarks for the sessions and the conference.

The Young Practitioner Panels

Commencing an Arbitration – Practical Insight into the Initiation of an International Arbitration Proceeding

The first panel discussed insights and common issues that arise when commencing arbitration. [Grace Haidar](#) (Associate, K&L Gates LLP) moderated the panel composed of attorneys, [Nicholas Hill](#) (Partner, McGuireWoods LLP) and [Julianne Jaquith](#) (Senior Associate, Quinn Emanuel Urquhard & Sullivan LLP), and [Abbey Hawthorne](#) (Deputy Director, ICC Arbitration and ADR), who offered an institutional perspective on commencing arbitrations.

The beginning of the discussion focused on three themes: client involvement, knowledge of the

facts, and arbitrator selection. Ms. Jaquith and Mr. Hill highlighted key aspects to bringing a claim to arbitration, covering both international commercial and investor-State cases. Both panelists stressed the importance of understanding a client's goals in arbitration and the importance of knowing the facts necessary to prove a claim.

The discussion then turned to the promotion of young and diverse arbitrators. Ms. Hawthorne touted the efforts of the ICC in promoting such arbitrators yet noted that the arbitration community at-large has a role to play in promoting diversity. Ms. Hawthorne urged young arbitrators to register through the ICC and practitioners to consider diversity in their arbitrator appointments.

Key Issues in the Ethics of International Arbitration Practice

The second panel addressed key issues in the ethics of arbitration, in a session moderated by [Erin Collins](#) (Associate, DLA Piper LLP) and a panel composed of [M. Laughlin Allen](#) (Associate, McGuireWoods LLP), [Eric Lenier Ives](#) (Associate, White & Case LLP), and [Mevelyn Ong](#) (Associate, Sullivan & Cromwell LLP). The panel discussed ethical issues that can arise at arbitral institutions and in the appointment and instruction of expert witnesses. The panel also discussed recent developments in international arbitration ethics, including the UNCITRAL/ICSID Code of Conduct and the International Bar Association's Taskforce to revise the IBA Guidelines on Conflicts of Interest for the first time since 2014.

The panel discussed the ethics of expert preparation across legal cultures. Here, Ms. Ong highlighted the difficulty of certain international lawyers participating in expert preparation, as their local rules do not permit them to do so. Further, Ms. Collins highlighted the dangers of too much expert preparation, as it can impact not only the credibility of the witness to the arbitrators, but it would result in extensive disclosure of what instructions were given to the witness. Mr. Ives noted that the use of legal instructions replacing expert analysis poses a risk to the quality and independence of the expert's opinion and their testimony's usefulness to the tribunal.

Mr. Ives further provided background on current ethical issues in investment arbitration and the role that norm-setting plays in UNCITRAL's codification project. The panel discussed the issue of so-called "double-hatting," where arbitrators may have multiple roles in the system, including acting as expert and counsel in international arbitration cases. Ms. Allen discussed the disparate effect such rules have on young arbitrators who attempt to move into the field. Acknowledging that connections play an important role in arbitrator selection, Ms. Allen explained how young arbitrators tend to arise from bigger law firms, which may present further difficulties with disclosure through double-hatting. With the conclusion of this panel, attendees readied themselves for the second event of the day.

The Tertulia Sessions

During the second session of Day 1, attendees had the opportunity to choose one of two consecutive tertulias, or small group discussions, to participate in for each session.

Session 1

The first two tertulias centered around procedural difficulties in arbitration. The first tertulia, titled "Has Arbitration Lost Its Edge, and If So, How Do We Fix It? The Length and Costs of International Arbitration Proceedings," addressed issues relating to the efficiency and cost of the

arbitration process. The discussion was guided by [Anna Kozmenko](#) (Partner, Schellenberg Wittmer Ltd.), [Shelby Grubbs](#) (Arbitrator, Mediator, and Special Master, JAMS), [Nancy Baughan](#) (Partner, Bradley Arant Boult Cummings LLP), and [Olivier André](#) (Client Relationship Advisor, Freshfields Bruckhaus Deringer LLP). Attendees of this discussion discussed the mitigation of environmental impacts, the use of expedited proceedings, the advent and elaboration of video conferencing technology, and obtaining evidence from third parties.

The latter tertulia, titled “Recent Developments in Arbitration Award Enforcement,” prompted conversations on jurisdiction consideration and the review of arbitrability. Guided by [David Gallo](#) (Of Counsel, Parker Hudson Rainer & Dobbs LLP), [Sebastian Feiler](#) (Partner, Bodenheimer), and [Carly Miller](#) (Partner, Bradley Arant Boult Cummings LLP), the panel addressed whether a court must give deference to the result and opinion on a judicial review of the arbitration. The group discussed that, even with *competence-competence* provisions, it appears that courts have legal autonomy to decide whether a tribunal properly accepted its own jurisdiction, which poses problems for the international arbitration community where enforceability of the award remains subject to local jurisdictional challenge.

Session 2

The next two tertulias centered around specific practice areas, covering developments in insurance arbitration or construction. The first tertulia discussed the recent resistance of the U.S., U.K., and Bermuda to arbitration over insurance matters. The session was guided by [Joseph Englert](#) (Partner, McGuireWoods LLP), [Leslie Davis](#) (Partner, Troutman Pepper Hamilton Sanders LLP), [Paige Freeman](#) (Chief Legal Officer, Munich Re), and [Lawrence Bracken](#) (Partner, Hunton Andrews Kurth LLP). The experienced insurance arbitration counsel and the attendees discussed battles surrounding choice of law, anti-arbitration statutes, anti-suit injunction rulings, and arbitration procedures within insurance arbitration.

The latter tertulia discussed the rise of multi-party and multi-claim construction arbitration, where the bifurcation of such issues has become more commonplace due to the complexity of the issues.

The session was guided by [Peter Crofton](#) (Partner, Smith, Gambrell & Russell LLP), [R. Zachary Torres-Fowler](#) (Partner, Troutman Pepper Hamilton Sanders LLP), [Jessica Sabbath](#) (Counsel, McDermott, Will & Emery LLP), and [Patricia Thompson](#) (Mediator and Arbitrator, JAMS). Participants discussed institutional appeals processes, and how such processes run against the goal of arbitration to maximize efficiency. Finally, participants discussed jurisdictional issues, as attendees considered both the importance of finding a jurisdiction that consistently enforces awards, as well as the difficulty enforcing awards in China. With the conclusion of the tertulias, attendees were able to converse and return home.

Day 2

The Keynote Address

On October 3, participants convened at the offices of Smith, Gambrell & Russell LLP for Day 2 of the conference. [Prof. Chiara Giorgetti](#) (Professor, University of Richmond School of Law and Senior Fellow, International Claims and Reparations Project) delivered the keynote address, discussing key developments in UNCITRAL’s Working Group III developing reforms of the

international investment dispute settlement system, including the [Code of Conduct for Arbitrators in International Investment Disputes](#), which was recently adopted at the July Commission meeting.

Attendees enjoyed two panels shortly after the engaging lecture.

Top 10 Developments in International Arbitration in 2023

The first panel addressed significant developments in international arbitration in 2023. Moderated by [Timothy Tyler](#) (Counsel, Vinson & Elkins LLP), speakers [Alan Anderson](#) (Founder, Alan Anderson Law Firm LLC), [Mark Kantor](#) (Adjunct Professor, Georgetown University Law Center), and [Glenn Hendrix](#) (Chairman, Arnall Golden Gregory LLP) discussed topics such as the Borneo International Arbitration Center, the use of RICO to enforce arbitration awards in *Yegiazaryan v. Smagin*, 599 U.S. 533 (2023), the UNCITRAL/ICSID Code of Conduct, climate change, and arbitration ethics.

The panelists' discussion noted how decentralization and collaborative work on newer editions of ethical codes of conduct show a growing acceptance of international arbitration.

Discovery and Disclosure in International Arbitration

The second panel then addressed issues in discovery and disclosure in international arbitration. Moderated by [Anna Kozmenko](#) (Partner, Schellenberg Wittmer Ltd.), speakers [James Boykin](#) (Partner, Hughes Hubbard & Reed LLP), [Thomas Allen](#) (Partner, Kilpatrick Townsend & Stockton LLP), and [Rainbow Willard](#) (Independent Arbitrator, Willard Arbitration) discussed the difficulty of disclosure in international arbitration because of the varying discovery regimes across the world. Despite such limitations, the panelists discussed both official mechanisms and alternative methods to secure evidence outside of general disclosure. The panelists also noted the risks of a party's obstructive behavior during the process, including examples from panelists' practice, and potential sanctions that may arise in response to such conduct. Finally, the panelists confronted the issue of unlawfully obtained evidence and its case-by-case admissibility in arbitration.

Fireside Chat

The afternoon opened with a fireside chat with the President and CEO of the AAA-ICDR, [Bridget M. McCormack](#), who discussed the benefits of private dispute resolution, the differences between domestic and international users' demands, and innovation within her organization.

With the rise in international business deals and disputes, Ms. McCormack noted that the separation of domestic and international cases responded to international users' hesitance to adopt U.S.-style discovery in arbitration. She further noted the AAA-ICDR's focus on innovation and institutional support to disputing parties, leveraging the experience and expertise of its case managers.

Issues in Third-Party Funding

The third panel turned to discuss ongoing matters with third-party funding with the background of the UK Supreme Court invalidating aspects of third-party funding agreements. Moderated by [Christof Siefarth](#) (Partner, Bodenheimer), panelists [Jeffery Commission](#) (Director, Burford Capital), [Kirk Watkins](#) (Of Counsel, Davis, Zipperman, Kirschenbaum & Lotito LLP), and [James Blick](#) (Director and Co-Founder, ERSO Capital) discussed the rise of third-party funding across the

world. The panelists noted present challenges in the review of funding agreements and confidentiality. Further, panelists discussed the importance of an initial case assessment in their businesses, emphasizing that once a decision to fund was made, the third-party funder loses a key element of control. The panelists finally noted the importance of considering the case as part of the larger litigation portfolio, noting that large, long-term cases tend to be more attractive than smaller cases with quicker returns.

The Risks and Benefits of New Technologies to International Arbitration

The final panel of Day 2 then turned to the introduction of new technology in international arbitration. Moderated by [Victoria Alvarez](#) (Partner, Troutman Pepper Hamilton Sanders LLP), panelists [Stephanie Cohen](#) (Independent Arbitrator, Cohen Arbitration), [Mark Morril](#) (Independent Arbitrator, Morril ADR), [Annie Lespérance](#) (Head of Americas, Jus Mundi) and [Sebastian Feiler](#), (Partner, Bodenheimer) discussed the rise of artificial intelligence and how arbitration must adapt to its growing use in the legal profession.

After a brief overview of AI's development, the panel articulated how AI can assist in constructing "Rule-Based Models." Additionally, the further development of AI through Deep Learning and Large Language Models ("LLMs") can turn the technology into a tool, only if legal professionals are trained in how to use such technology.

The panel cautioned, however, that practitioners must balance the use of such technology with their professional obligations. The use of AI can raise issues of confidentiality as many tools lack the necessary cybersecurity necessary for the practice. The panel further noted that, at the end of the day, AI is unlikely to ever be able to offer a "reasoned" decision required for an enforceable arbitration award.

Day 3

The final day of the Conference led participants to Troutman Sanders' offices. After brief remarks from [Jeremy Heep](#) (Partner, Troutman Pepper Hamilton Sanders LLP), attendees participated in two final panels on the impartiality of arbitrators and issues in arbitration.

Impartiality in Arbitration: Perspectives and Risks of a Party-Appointed Arbitrator

The first panel discussed the power of practitioners engaged in arbitration to influence the composition of the tribunal. Moderated by [G Brian White](#) (Partner, King & Spalding LLP), the panel composed of [Shelby Guilbert](#) (Partner, McGuireWoods LLP), [Albert Bates, Jr.](#) (Partner, Troutman Pepper Hamilton Sanders LLP), [Isabel Fernández de la Cuesta](#) (Independent Arbitrator, Isabel Fernández de la Cuesta Arbitration), and [Luis Martinez](#) (Vice President, AAA-ICDR). The panel discussed the responsibility of the parties to ensure that party-appointed arbitrators remain impartial throughout the arbitration. Through the discussion, panelists confronted the various problems party-appointed arbitrators face and their potential solutions to ensure the impartiality of the proceedings.

Issues in Arbitration Award Enforcement

The final panel of the conference further discussed major developments in the enforcement of

international arbitral awards. Moderated by [Timothy Nelson](#) (Partner, Skadden Arps Slate Meagher & Flom LLP), the panel consisted of [Thomas Childs](#) (Counsel, King & Spalding LLP), [Nilufar Hossain](#) (Investment Manager, Omni Bridgeway), [Thomas Walsh](#) (Partner, Freshfields Bruckhaus Deringer LLP), and [Adriana Riviere-Badell](#) (Partner, Kobre & Kim LLP). The panel discussed the recent federal [District of Delaware decision](#) that permitted the auctioning of Venezuela's U.S. assets, the D.C. federal court rulings on intra-EU and Energy Charter treaty [award enforcement](#), and the Yukos arbitration award's ongoing judicial review.

The conference concluded with final remarks from the Immediate Past President of AtlAS, Shelby Guibert.

Conclusion

As a second-year law student attending between classes, my mind raced with questions after leaving the Conference, even after returning to campus (my apologies to the Professors whose lectures were scheduled immediately after): How will arbitration adapt to be a more diverse practice? Can the demands of arbitration coincide with its goal of efficiency? Is arbitration a reliable system when awards may be unenforceable and result in wasted time and expenses? Will international arbitration adopt artificial intelligence within its general practice before the judicial system? Such questions will only be answered in time as the international commercial arbitration community continues to expand and innovate. The 12th Annual AtlAS Conference provided a nexus for legal professionals in different stages of their careers to learn more about their practice and discuss with like-minded individuals.

Thanks to the organizers, panelists, and attendees, such discussions can continue to grow, not just within the Atlanta international arbitration community, but nationwide as practitioners continue to grapple with the concepts discussed through the three-day conference.

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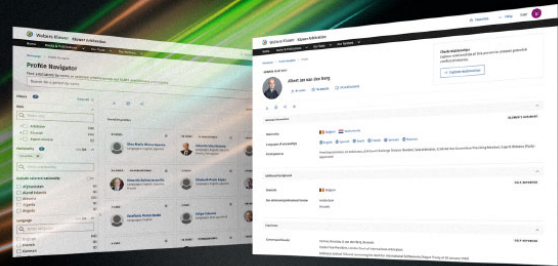
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