

Kluwer Arbitration Blog

The Third ICC Arbitration Conference for the Northeast of Brazil: Exploring the Region's Full Potential

Hugo Marinho (BonfimNovis) · Sunday, December 10th, 2023

As the most prestigious arbitral institution in the world, the [ICC International Court of Arbitration](#) celebrated its 100th anniversary in 2023. The Third ICC Arbitration Conference for the Northeast of Brazil ("ICC Conference"), convened by the International Chamber of Commerce Court and the National Committee of Brazil, took place on 4 October 2023, to commemorate this historic event.

A broad audience of attorneys, in-house counsel, arbitrators, experts, and students packed the auditorium for the ICC Conference in Salvador. The ICC Conference's [program](#), which included one interview, four panels, and 24 speakers, gave attendees the chance to consider the development of arbitration throughout history and the crucial part that the ICC Court has played in that development.

Below is a list of the ICC Conference's main highlights.

100 Years of the ICC Court and Its Influence on Dispute Resolution in Brazil

The main focus of the panel moderated by [Raphael Lang Silva](#) (Counsel, ICC International Court of Arbitration) was to discuss the possible advantages of arbitration and to demonstrate the increasing alignment of the ICC with the Brazilian market, including the Northeast region.

- [Mayara Nunes](#) (Deputy Counsel, ICC International Court of Arbitration) provided an overview of the ICC's activities in Brazil and the Northeast, presenting statistics that indicate a growth trend. She highlighted that the energy and construction sectors are the most significant in both the national and regional contexts. The panelist illustrated how the office based in São Paulo has a nationwide reach, administering cases located in cities such as Salvador, Recife and Natal.
- [Letícia Abdalla](#) (Partner, CFGS Advogados, São Paulo): In her opening remarks, the panelist emphasized that arbitration is "*absolutely established in Brazil*". After presenting statistics on the use of arbitration in Brazil, she discussed the advantages of arbitration compared to state jurisdiction, with a particular focus on the distinctive features of ICC arbitration, especially emphasizing flexibility and expeditiousness. According to the panelist, the costs of arbitration are directly related to the value provided to its users.
- [Natália Mizrahi Lamas](#) (Partner, FCDG Advogados, Rio de Janeiro) presented a comparison between expedited arbitration and regular arbitration in accordance with the key provisions of the

ICC rules. “*It is essential to keep in mind that there is no one-size-fits-all solution*”, she said. According to the panelist, the choice between one or the other mode depends on an understanding of their respective specificities, the concrete situation, as well as the actions of the parties and their counsel. In her words, “*as lawyers, we play a very important role in ensuring the expeditiousness and efficiency of the procedure*”.

- **Antônio Adonias** (Court of Appeal Judge at TJBA, Professor at FDUFBA) discussed the roles of the emergency arbitrator and the state court judge in interim relief matters. The panelist highlighted that the emergency arbitrator can address interim disputes in the same foreign language in which the contract is potentially written and is more flexible or open to the application of foreign law. Additionally, the emergency arbitrator has greater availability of time and specialization to handle specific disputes. However, he noted that, compared to emergency interim relief, when seeking judicial interim relief, a party has a higher likelihood of obtaining it within a shorter period and without the need to hear the opposing party, while it does not have to wait for the appointment of the emergency arbitrator. Also, judicial interim relief often involves lower costs than the arbitral procedure, and there is no requirement to initiate a new procedure to enforce the preliminary measure.

Limits and Practices Regarding Arbitration Costs

The central point of this panel, moderated by **Gabriel Seijo** (Partner, Cescon Barriou, Salvador), was the importance of early stipulation of the terms by which attorney’s fees and potential financiers’ costs will be shared in the arbitration procedure. According to the panelists, this should be done from the outset of negotiations to ensure legal certainty for all parties involved.

- **Carlos Elias** (Partner, CEARB, São Paulo) opened his remarks with an anecdote about the split of costs, the panelist emphasized that success fees find their “*entry point*” into the arbitration procedure only through the parties’ will, which should ideally be established from the outset of the contractual relationship. He underscored the importance of parties expressly clarifying their expectations regarding the method of calculating and updating these fees.
- **Clávio Valença** (Partner, Valença Arb, São Paulo) discussed the parties’ responsibility for potential reimbursement of success fees. He began his remarks by pointing out that “*success fees are not accepted everywhere*”, emphasizing the significance of local culture and local ethics in interpreting this concept. According to the panelist, the attorney must be well-versed and attentive when characterizing the success fees to invoke the application of the most favorable legal regime for the client.
- **Natália Diniz** (Legal, São Paulo) presented the perspective of in-house counsel in arbitration and the possibility of paying fees to them, by analyzing previous decisions rendered in ICC arbitrations. The panelist noted that in the few cases where the ICC approved such payments, it was understood as compensation for the company itself, especially in complex cases where “*the participation of the in-house counsel would no longer fall within the ordinary cost of doing business*”. The panelist emphasized that the Court considers the reasonableness and necessity of this reimbursement request, and, in particular, the demonstration that the in-house counsel played an exceptional and essential role in the strategic management and resolution of the case. Natália concluded that it is important for the parties to define from the outset if and how in-house counsel fees will be charged, allowing for a more effective allocation of risks.
- **Marianna Marra** (Partner, Visconte Advogados, São Paulo) addressed the reimbursement of costs

to funders in an arbitration procedure, a topic that has been relatively unexplored by arbitration tribunals in Brazil but is likely to gain importance as arbitration expands in the country. Drawing from a paradigmatic case [Essar Norscot](#) (reported [here](#)), the panelist concluded that the reimbursement of amounts paid to the funder “*should be the exception*”. Firstly, because the losing party has no control over the terms of the funding agreement. Additionally, the detailed scrutiny by tribunals of the funding agreement and the reasonableness of the amounts stipulated therein may end up rendering the concept unworkable.

Law 14.133, Arbitration, and the Public Administration

The closing panel, moderated by [Ane Perez](#) (Partner, Perez, Giannella, D’Ávola Sociedade de Advogadas, São Paulo), addressed arbitration in disputes against the Public Administration, making it clear that arbitration has been increasingly demanded by and embraced by administrators, although the extent of arbitral practice varies among different federal entities in Brazil. On the other hand, this panel demonstrated that lawyers and the technical staff of Public Administration are actively engaged in promoting institutional dialogue among public entities from various regions of Brazil, facilitating the transfer of know-how and the development of arbitral practices.

- [Caio Druso](#) (State Attorney of Bahia, Lawyer, Advocacia Caio Druso, Salvador) said that, although arbitration is a well-established institution, state attorneys often have limited exposure to it. This is because public law practice in Brazil, and especially in Bahia, involves a high volume of serial disputes, making it challenging to focus on strategic cases. Therefore, the panelist extends an invitation to arbitration institutions to engage with public officials so that the arbitral culture can be more widely disseminated and embraced by the public administration. In his words, “*what I propose to these institutions is that they [...] look to public administrators, who are part of the recipients of these alternative dispute resolution techniques*”.
- [Eugenia Marolla](#) (Civil House Government, São Paulo) mentioned that the State of São Paulo’s attorney’s office had to establish a dedicated department for arbitration because it has unique characteristics that require a different approach from public attorneys and the Public Administration as a whole. This includes close collaboration between the public attorney’s office and the technical departments of the Public Administration for the preparation of defenses. Arbitration “*is a market demand that has been embraced by administrators in a broad sense*”, according to her. Regarding the increased expertise of the State of São Paulo’s attorney’s office in arbitration proceedings, she stated: “*I also see the distinct stage at which the various federal entities find themselves in relation to arbitration not as a problem but rather as an opportunity for us to exchange experiences, an opportunity for us to share what didn’t work, what did work, and to make progress*”.
- [Roberta Negrão Costa Wachholz](#) (Deputy Attorney General of ANTT/PGF-AGU/PF-ANTT, Brasília) addressed the federal aspect of arbitration in public administration. According to the panelist, “*the legislative evolution at the federal level has been translated into arbitration clauses*” and this has necessitated adaptation from the representation bodies of the public administration, including the specialization of its lawyers and technicians. Today, the federal administration is in a phase of restructuring to better prepare its members for this new reality. It is actively engaged in adapting to work on arbitration proceedings and other alternative dispute resolution methods, considering the advantages of these mechanisms and their cost-effectiveness for the public administration.
- [Egon Bockmann Moreira](#) (Professor, University of Law of UFPR, University of Law of the University of Coimbra), when discussing the innovations of the new [Brazilian Public Bid Act](#)

concerning arbitration, argued that it promotes the resolution of disputes through arbitration: “one of the structural aspects of the new public bid act pertains to the distinct understanding of the dispute resolution method”. He emphasized: “a dialogic understanding regarding the relationship between private individuals and the public administration”.

Conclusions and Closing Remarks

The success of the ICC Conference demonstrates how, in the Northeast of Brazil, arbitration is a living reality, driven by professionals and scholars who make up a “critical mass” as defined by **Clávio Valença** (Partner, Valença Arb, São Paulo). This advancement has been propelled by the work of the ICC, and the promise is for the institution to get closer to this region progressively.

During the event, we were able to hear several Brazilian accents, demonstrating the increasing importance of Northeast region as a site for arbitration. The **ICC International Court of Arbitration**’s dedication to unlocking the Northeast’s potential serves as a powerful reminder that we all can seize the opportunities from that region.

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