

Kluwer Arbitration Blog

Is the City of Lights Losing Its Allure? Highlights from the Paris Arbitration Breakfast Conference on the Seat of Arbitration

Melisa Gürgen (ICC International Court of Arbitration) · Tuesday, December 19th, 2023

On October 31, [Paris Arbitration](#) hosted a conference on the choice of Paris as the seat in international arbitration, and its far-reaching implications. The conference, taking place in the heart of Paris, featured a star-studded line-up of distinguished experts including a keynote address delivered by [Claudia Salomon](#), President of the ICC International Court of Arbitration, followed by a panel featuring [Samaa Haridi](#) (King & Spalding LLP, New York), [Philippe Pinsolle](#) (Quinn Emanuel Urquhart & Sullivan LLP, Geneva) and [Xavier Favre-Bulle](#) (Lenz & Staehelin, Geneva). The event finished off with closing remarks delivered by the Honorable [Philip Jeyaretnam](#), President of the Singapore International Commercial Court.

Keynote: “Arbitration: Here, There and Everywhere”

Claudia Salomon’s keynote address, titled “Arbitration: Here, There and Everywhere”, transported attendees back a century, unraveling the history of how Paris was chosen as the headquarters for the ICC, and subsequently its International Court of Arbitration. Referring to research done by [Mikaël Schinazi](#), Ms. Salomon mentioned how the initial documents described the selection of the city for the headquarters as “to be determined.”

Paris is certainly a beautiful city; however, the choice wasn’t an obvious one 100 years ago. Many cities were in the running, but ultimately Paris was selected, perhaps as a compromise between the Americans who wanted the new organization to be close to Geneva, the French, who suggested Washington, and the English, who had suggested Brussels or Paris. It is mentioned how this decision could also have been a gesture to Étienne Clémentel, French Minister of Finance who served as the first chairman of the ICC and went on to serve as the first president of the Court.

Identifying key reasons for Paris’ prominence in international arbitration, Ms. Salomon highlighted the sophistication of French arbitration law, the rich Civil Law tradition, judiciaries known for their impartiality, and a world-class legal market home to leading practitioners. The announcement of the reopening of the Paris-based ICC Hearing Center in 2024 certainly is a promising addition to Paris’ enduring allure.

The keynote address also offered insights into ICC case statistics, revealing Paris as the consistent

top choice throughout the years, 2008-2022, except for two instances in 2019 and 2021 when London briefly took the lead. Ms. Salomon explained how these statistics affirmed that Paris serves as the seat for a diverse range of cases, accommodating various nationalities, governing laws, languages, and dispute types, highlighting that the city's appeal transcends the mere correlation to governing law or language choices.

Ms. Salomon concluded by addressing the challenges that Paris faces in maintaining its position as a leading seat, particularly in the realm of seat-based marketing. Various arbitral institutions actively promote themselves on local and regional fronts, posing a potential threat. Additionally, certain seat choices are intricately linked to the governing law, as seen in New York, where the seat choice and governing law are closely aligned.

Closing off, Ms. Salomon underscored the importance of factors such as the strength of universities and institutions in Paris, along with the geopolitical landscape, and how influential parties and the flow of money can play pivotal roles in seat selection.

She identified a significant opportunity for Paris in the field of Civil Law and emphasized the need to understand why Civil Law jurisdictions might opt for a Common Law jurisdiction when going into arbitration. Successfully entering this market could position Paris to attract Civil Law arbitration cases, presenting a promising prospect.

Panel Discussion on Paris-Based Arbitration

In an engaging panel discussion, practitioners from both France and abroad shared their insights on the intricacies of arbitration in the city.

Philippe Pinsolle, a seasoned French practitioner, highlighted the pivotal role of local courts in supporting the arbitration process. He mentioned how without the support of the local courts even the most adept marketing efforts can only yield limited results. Mr. Pinsolle illustrated this point by citing the negative effect of the principle of “*compétence-compétence*” a rule referenced in both the Geneva Convention and the New York Convention.

Interestingly, while the United Kingdom, France, Switzerland, and Germany all adhere to this principle, the nuances lie in its application. For instance, in the United Kingdom, a full trial before the courts is required to determine whether a stay – of legal proceedings in favor of arbitration – should be granted. In contrast, in France, the application of this principle means that State courts lack jurisdiction to decide the dispute or rule on the validity of the agreement unless it is prima facie null and void and cannot be applied – an extremely high threshold, meaning it should be self-evident that the agreement is null and void.

These variations in application underscore how the allure of a seat hinges more on judicial policy than explicit legislation. Even when legislation appears identical in wording, it is susceptible to distinct interpretations and practices. Mr. Pinsolle illustrated this point with concrete examples from French case law, highlighting the substantial trust that French courts place in arbitrators to accurately determine their jurisdiction. This trust is a vital aspect of the arbitration landscape in France, rendering it a compelling choice for an arbitral seat.

Samaa Haridi, a New York-based practitioner with a Civil law background, delved into the

intriguing aspect of enforcing awards that have been annulled at the arbitral seat – a **distinct characteristic** of the French legal landscape. In the French context, courts assert that “an international arbitral award stands independently of any national legal order, with its validity determined by the laws of the country where enforcement is sought” (*Putrabali decision*). This distinctive viewpoint in France allows for the enforcement of an award that has been set aside at the seat.

Ms. Haridi drew comparisons with the approach in the United States. In the States, the situation differs significantly, the arbitral award is regarded as a product of the legal seat of arbitration. A nuanced approach is adopted, where the court responsible for enforcement must decide whether to set aside the award or to enforce it. The general rule leans toward setting aside the award, with the exception being to disregard the annulment of the award at the legal seat. Ms. Haridi underscored how this divergence in approaches highlights the contrasts in enforcement procedures between the two jurisdictions, further building on Paris’ attractiveness as a leading seat.

Xavier Favre-Bulle, a distinguished Swiss practitioner, shared his insights on the key topics of interest he identified through his experience in Paris-based arbitrations. These included:

1. The delocalization of the Autonomy of the Award (as explained by Ms. Haridi);
2. The extent of disclosure;
3. The principle of contradiction;
4. The power of review.

The Extent of Disclosure

Mr. Favre-Bulle explained how he was surprised by the **extent of disclosure** practiced in France, especially regarding new matters emerging during the proceedings. In Switzerland, the introduction of a new undisclosed appointment wouldn’t be considered grounds for a challenge – a stark contrast to the practice in France.

Respecting the Principle of Contradiction

Emphasizing the importance of adhering to this principle in France, Mr. Favre-Bulle highlighted that its strict application eliminates all concepts of “*jure novit curia*”, making it imperative to discuss all matters – another notable difference from the practice in Switzerland.

The Power of Review

Amid growing concern over the recent shift towards an extended, maximalist, approach to the scope of the French court’s power of review when dealing with allegations of corruption on grounds of public policy, Mr. Favre-Bulle addressed the infamous *Belokon* decision of the French Court of Cassation. He argued that this shift, although sudden, wasn’t surprising considering how the initial review had long been criticized by French practitioners as superficial. He noted, however, that this sudden extension wouldn’t have been possible before the Swiss Courts. Mr.

Favre-Bulle concluded by reminding the audience that the reliability of an arbitral seat should not be solely measured by a handful of recent cases and reassured the attendees that despite the buzz surrounding recent decisions of the French courts, France remains one of the most dependable seats, warranting no concerns in that regard.

Closing Remarks

The conference concluded with the insightful remarks of the Honorable Philip Jeyaretnam, President of the Singapore International Commercial Court. Exploring the future of seat choice, Justice Jeyaretnam underscored the importance of incorporating national diversity within both the judiciary and counsel, particularly for arbitral seats aspiring to serve the global international market and attract a diverse worldwide audience.

While the prevailing sentiment suggests that Paris has nothing to fear, the conference served as a reminder that the city cannot take its long-standing allure for granted. As the international arbitration landscape evolves, the City of Lights must proactively evolve to meet the ever-changing needs of the arbitration community, ensuring its continued prominence as a leading choice in the dynamic world of international arbitration.

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