

Kluwer Arbitration Blog

2023 Year in Review: Technology

Raoul J. Renard (Senior Assistant Editor) · Monday, January 22nd, 2024

The year 2023 bore witness to the rise of ChatGPT, a development which prompted a flurry of commentary on the implications of the use of generative artificial intelligence (AI) in international arbitration. Contributing writers continued to show interest in the resolution of blockchain-related disputes, as well as the development and use by arbitral institutions of electronic filing systems. Finally, our [Arbitration Tech Toolbox](#) series grew to 22 posts, exploring issues ranging from AI to deepfakes, extended reality to the use of lie detection technologies in real-time cross-examinations.

Artificial Intelligence

The use of AI in dispute resolution is not new. Indeed, to cite just one use case, parties have used predictive coding – also known as technology assisted review – for some time. If a theme dominated conversation on the use of technology in international arbitration this year, it was the role of generative AI prompted by the release of OpenAI's [ChatGPT](#). For a primer on ChatGPT and its potential uses (and abuses) in arbitration, read [this contributor piece](#), drafted with the assistance of GPT 3.5 itself. ChatGPT and other large language model (LLM) tools may be used to enhance and accelerate processes of document drafting, party collaboration, predictive analysis, dialectic argumentation, and [3D modelling](#). A [Young ICCA event](#), hosted in collaboration with [ArbTech](#), canvassed the surfeit of AI tools increasingly being used in arbitration and litigation, such as [ArbiLex](#), [CoCounsel](#), [Harvey](#), and [Copilot](#).

For all its benefits, however, the use of ChatGPT is not without risks, both professional and ethical. LLMs can generate misleading or false statements, create fraudulent documents, replace a tribunal's independent and impartial decision-making, and even mimic the drafting style of particular authors. In November 2023, law firm [Bryan Cave Leighton Paisner LLP](#) published its annual survey, [AI in IA: The Rise of Machine Learning](#). Among other insights, the survey found that:

90% of respondents were aware that AI tools existed that could perform a range of tasks in international arbitration, but 53% of respondents thought AI tools should not be used for the generation of text for use in legal argument/legal submissions, and 88% of respondents were very concerned or somewhat concerned about AI Hallucination – the risk of the AI tool conjuring up fictitious information.

Two further concerns, explored [here](#), are that AI technologies may reach [technological singularity](#), the tipping point at which AI systems become so advanced that they transcend human intelligence, and that LLMs are only as good as the datasets on which they are fed (the problem of “garbage in, garbage out”). One contributor further [analyzed](#) the ethical implications of ChatGPT use, highlighting the issue of equality of arms with a nod to Plato’s *Republic*.

The use of AI gives rise to further issues of party consent and tribunal discretion. As discussed [here](#), a party may be free to use AI to gather relevant documents upon which it may wish to rely without disclosure of such use to its counterparty, but disclosure may be required by the tribunal in the course of document production. Parties may also agree for a tribunal to use generative AI in drafting the procedural history of an arbitral award but may balk at its use to prepare reasons or decide the merits of a dispute. Noting the broad discretion afforded to tribunals to decide upon procedural issues, [one piece](#) posited that an emphasis on efficiency found in many institutional rules may encourage the limited use of AI.

Institutional rules are overridden by the relevant *lex arbitri*, however, calling for an assessment of the requirements of applicable national laws, such as the [European Ethical Charter on the Use of Artificial Intelligence in Judicial Systems and their Environment](#) (2019), which mandates that AI tools respect fundamental rights and remain “*under user control*”. The European Parliament made further advances in 2023 with its [AI Act](#). Set to enter into force in 2025 or 2026, the Act will [seek to ensure](#) that AI systems used in the EU are safe, transparent, traceable, non-discriminatory, and environmentally friendly. In late 2022, the Supreme People’s Court of the People’s Republic of China issued its [Opinion on Regulating and Strengthening the Applications of Artificial Intelligence in the Judicial Fields](#) (Opinion). As one practitioner in a Hong Kong Arbitration Week panel [observed](#), the Opinion affirms the supportive role of AI in adjudication while drawing the bottom line that AI should not replace judges in deciding cases.

In early 2023, the Chartered Institute of Arbitrators Brazil Branch coordinated a [fascinating experiment](#), wherein ChatGPT-4 competed – through human oralists – in a mock hearing based on the 30th Willem C. Vis International Commercial Arbitration Moot (Vis Moot). In a further development, the rules of the [31st Vis Moot](#) provide, for the first time, guardrails on the use of AI by competing teams. The rules permit the use of AI tools for research but prohibit the submission of AI-generated text and the training of AI tools with the Moot problem. A [recent piece](#), analyzing the rules, foresees that the new rules “*will be the first ‘real’ test of regulated uses of AI in international arbitration*” and will generate lessons to be learned that will find their way into soft law guidance and procedural orders in 2024.

E-filing and Online Case Management

Online case management saw further strides in 2023. At [Hong Kong Arbitration Week 2023](#), participants [observed](#) that the [Hong Kong International Arbitration Centre Case Connect](#), launched in 2021, has been used by at least 34 arbitral tribunals, benefiting 80 parties as of September 2023. In October 2022, the ICC launched its new digital case management platform, ICC Case Connect. Users can expect to (i) e-file their Request for Arbitration, (ii) upload, search, and filter documents, (iii) access their case and document library, (iv) communicate with all case users, and (v) consult the arbitrator directory. Two users [commented](#) that being able to submit documents of any file size and to access and download them as needed:

“is a welcome addition and should significantly increase the overall efficiency of the arbitral process while avoiding the risks associated with unverified FTP [File Transfer Protocol] sites or the hassle and confusion of multiple emails.”

The Arbitration Center of the Iran Chamber of Commerce (ACIC) [updated its rules](#) in February 2023 to accommodate the greater use of technology in arbitration proceedings and hearings by (i) enabling all or part of an arbitration to be conducted virtually unless otherwise agreed or unless the ACIC deems the arbitral tribunal’s reasons to conduct the hearing virtually to be inappropriate, and (ii) introducing an electronic filing system.

Arbitrating Tech and IP Disputes

During [California International Arbitration Week](#), a panel [concluded](#) that the so-called “California Arbitration Act” (contained in the [California Code of Civil Procedure, Title 9, §§ 1280 – 1294.4](#)) should serve to bolster California as a seat of international arbitration and assuage broader concerns resulting from the invalidation of arbitration agreements by courts in domestic consumer and employment disputes. The panel further noted the manifold advantages of international arbitration for cross-border tech disputes, including the near universal enforcement of awards under the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, the finality of arbitral awards, the neutrality of tribunals, the confidentiality of proprietary information, the flexibility as regards remedies, and the ability of parties to customize the arbitral process.

[One piece](#) charted the gradual increase in IP-related cases referred to the Korean Commercial Arbitration Board (KCAB). Cases in sectors of the South Korean economy which typically employ arbitration – such as construction and manufacturing – increasingly have an IP-related dimension, whether that be in the form of patent infringement, trade secret theft or copyright violation. Emerging IP-related industries, such as gaming and life sciences, are also increasingly contributing to the KCAB’s arbitration caseloads.

Speaking of gaming, contributors [noted](#) the meteoric rise of eSports in recent years and the concomitant rise in eSports disputes. Perhaps the World Intellectual Property Organization Arbitration and Media Center is well equipped to assist, with its [ADR procedures](#) specifically tailored to address disputes in the world of video games and eSports.

Arbitration and the Blockchain

The [2022 Technology Year in Review](#) highlighted commentary on the impact of the [Crypto Winter](#). With its gradual thawing, this year, several pieces further considered the role of arbitration in the resolution of blockchain disputes. For a discussion on the emerging regulatory and jurisprudential treatment of cryptocurrencies in South Korea, read [this piece](#). One contributor [opined](#) that ADR mechanisms are particularly well-suited to the resolution of blockchain-related disputes, as the paramountcy accorded to party autonomy permits “*any manner of hybrid, multi-stage, culture-, religion-, and locality-specific mode[s] of dispute resolution*”.

In a particularly cogent piece, one contributor [explored](#) the principles underlying adjudication on the decision protocol [Kleros](#). Modelled on game theory, the Kleros juror system provides an economic incentive for adjudicators to arrive at “coherent” decisions (the term given to those decisions that enjoy majority juror support). Jurors on the platform are impartial and independent decision makers. As third parties empowered to make decisions on an *ex aequo et bono* basis, our contributor opined that Kleros jurors are situated behind the Rawlsian “veil of ignorance”, guided not by technical legal rules but by general maxims of fairness and justice.

New Tools in the Arbitration Tech Toolbox

Where last year contributors [trialed](#) – with mixed results – the use of avatars in the Metaverse, this year featured a [piece](#) on the potential for Extended Reality headsets to (i) bring evidence to life, (ii) recreate site visits, (iii) enable interactive simulations and demonstrations, and (iv) enhance virtual or hybrid hearings. Another contributor [considered](#) the potential for lie-detecting software to provide real-time feedback while cross-examining witnesses. Though such technology may hold the key to enhancing human trust, a further piece [explored](#) the concerning rise of deepfakes and their implications for audiovisual evidence. Perhaps encouragingly, the solution to this issue appears to be further technology, such as AI authenticators, digital watermarking, and specialized videoconferencing software.

Conclusion

Clearly, generative AI will have an outsized impact on international arbitration, enhancing efficiency but introducing new risks to party and tribunal conduct. The lively discussion in the Blog this year highlighted both the promise of such technology, as well as the need for judiciousness in its use, and continued care that AI use does not supplant the training and independent judgement of counsel, tribunal secretaries and arbitrators. As always, we welcome your submissions on the intersection of technology and international arbitration and thank you for your readership over the past year.

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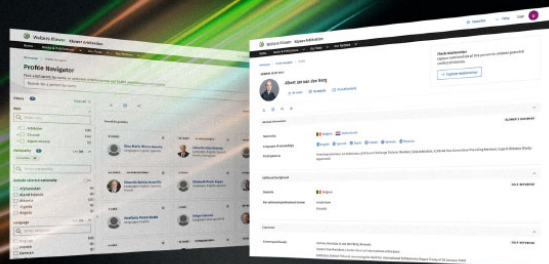
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