

Kluwer Arbitration Blog

ICCA Hong Kong 2024: Advocacy, Procedures, and Ethics in Focus

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This is the third post in ICCA's series of reports on the [ICCA 2024 Congress](#) ("Congress"), which took place in Hong Kong. This post reports on the events of Tuesday, 7 May 2024, the second full day of the Congress. As noted in the [coverage](#) of Day 1 of the Congress, the theme of this year's Congress—as ICCA President [Dr Stanimir Alexandrov](#) discussed in the [opening post](#) to this series—is "International Arbitration: A Human Endeavour" with panels revolving around the issue of human experience in international arbitration.

The Advocate

Moderated by [Mark Friedman](#), the first session of the second day saw the speakers [Victor Dawes SC](#), [Karl Hennessee](#), [James Lawrence](#), [Hon Justice Dato Mary Lim](#), and [Noradèle Radjai](#) exploring what makes an effective advocate, what the science of the human brain tells us about how persuasion works, and how advocates can harness that science.

The speakers started by analysing how decision-making works and its implications for advocacy, with particular regard to cognitive comfort and the impact of emotions. The speakers stressed the necessity of genuine credibility and discussed different ways of fairness. The discussion also addressed limitations to human cognitive skills, including the average attention span and the importance of engaging visuals.

The panel's conclusion was that advocacy in arbitration is as much about understanding human behaviour as it is about legal expertise. Adapting advocacy practices to accommodate these human elements aligns with clients' expectations for a more empathetic and persuasive approach. Ultimately, the human element of advocacy in arbitration serves as a powerful tool for achieving justice and resolving disputes.

Procedures and Behaviours

The second morning session was split into two parallel panels. In the first panel, moderated by [Maanas Jain](#), the speakers [David W Rivkin](#), [Gourab Banerji SA](#), [Susan Ahern](#), [Aisha Nadar](#) and

[Kap-You \(Kevin\) Kim](#) discussed how aspects of arbitration procedures impact the behaviour of its human participants.

The panel addressed topics including the importance of tailoring procedures for efficient dispute resolution, the impact of cultural differences on arbitration procedures, the unique characteristics of sports arbitration procedures, the use of multi-tiered dispute resolution clauses, and the challenges of translating legal concepts accurately across civil and common law systems.

The panel's takeaway was that it is incumbent on everyone to find ways to refine and place the human participant at the centre of each arbitration procedure.

It's (Not) Just Semantics – The Hidden Power of Language

The second of the parallel panels, moderated by [May Tai](#), saw the speakers [Samaa Haridi](#), [Jern-Fei Ng KC](#), [Lei Shi](#), and [Rainbow Willard](#) explore the significant influence of language on arbitration processes and outcomes.

The discussion benefited from the presentation of empirical research highlighting how language reveals various aspects of identity such as nationality and education, but does not accurately reflect intelligence, and the presentation of an empirical survey on bilingual Chinese-English arbitrations. The speakers addressed issues including the notion of English as a common language levelling the playing field in arbitration, the importance of cultural sensitivity in legal arguments, and the relevance of nonverbal communication.

Inter-Personal Conduct and Ethics

For the first parallel panel of the early afternoon session, moderator [Abby Cohen Smutny](#) was joined by speakers [Funke Adekoya](#), [Brandon Bang](#), [Nicolás Gálvez Solis](#), [Matthew Gearing KC](#) and [Jonathan Lim](#) to discuss ICCA's Guidelines on Standards of Practice.

The starting point was the need for laying down standards of civility applicable to all participants during arbitration that arise from the human need for respectful treatment even in the face of disagreement. The speakers then discussed in detail Guidelines I.B, II.D, III.A, III.B, III.C and IV.B, addressing topics including the need to respect different cultural backgrounds; tactics to address party representatives' conduct intentionally aimed at obstructing the arbitral proceedings; the conduct of arbitral tribunals, tribunal secretaries and arbitral institutions towards participants in the arbitration; and the experts' and witnesses' expected behaviour in the proceedings.

Answering the moderator's final question about whether arbitrators should act if they observe members of a party creating a disrespectful atmosphere, the speakers all agreed that arbitrators should address such concerns to ensure civility in proceedings.

Dispute Resolution and the Global Community

In the second parallel panel of the early afternoon session, moderated by [Judith Levine](#) and [Annette](#)

Magnusson, the speakers Catherine Amirfar, Martin Doe, Dyalá Jiménez and Petra Butler explored international dispute resolution in the context of the ways that human beings organise themselves in communities.

Discussions started by addressing how dispute resolution can tackle climate change as one of the main challenges for the global community, including from the perspectives of public international law and small and medium-sized enterprises. The panel also featured discussions of the [Agreement on Climate Change, Trade and Sustainability](#) and the [Multi-Party Interim Appeal Arbitration Arrangement](#), as well as a presentation of the [Green Pledge of the Campaign for Greener Arbitrations](#), a global movement to enhance understanding of the carbon emissions generated by international arbitration and to mitigate its ecological consequences.

Working in an Adversarial Environment

In the first parallel panel of the late afternoon session, moderated by Amanda Lee, the speakers Kathryn Britten, Daniel Kalderimis, Yoko Maeda, Professor Giacomo Rojas Elgueta and Emi Rowse (Igusa) explored the intersection of psychology and emotions in adversarial settings and discussed how a deeper understanding of the human condition could foster more collaborative and sustainable dispute resolution methods.

Discussions started from the inherently adversarial nature of the field, with the proposal that understanding and integrating principles from the theory of “doughnut economics” could help the understanding of the dilemmas facing arbitration practice. The panel included the quantum expert’s perspective on managing challenges throughout the arbitration lifecycle and addressed issues such as the dilemmas inherent in advocacy, the significant role that culture plays in adversarial processes, the relationship between arbitration and psychology, and strategies for successfully navigating adversarial environments in international arbitrations.

Costs and Economics

During the second parallel panel of the late afternoon session, experts with different backgrounds shared their experiences in relation to the costs and economics of international arbitration. Moderated by Aloysius (Louie) Llamzon and Thomas Stouten, speakers Prof. Crina Baltag, Rodrigo Garcia da Fonseca, Joanne Lau and Ruth Stackpool-Moore discussed access to justice including the hurdles faced by impecunious parties, the dynamics of third-party funding, the tensions between funders’ interests and the economic realities of arbitration, and the intricacies of security for costs including fairness in cost allocation.

The panel also explored ideas for the reduction of costs. Discussions highlighted that most rules provide reasonableness, rather than *ad valorem*, as the standard for costs of arbitration. When asked whether cost management and reduction should be one of the best arbitral practices, the speakers considered that the parties could control costs by procedural orders and budget checks, and that, from a third-party funding perspective, it would be useful to know where the limit is set.

The panel’s conclusion highlighted the importance of limiting costs while maintaining the quality of the award, emphasising the human element in costs and economics of international arbitration

and the correlation between access to justice and arbitration.

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