
Kluwer Arbitration Blog

The Contents of Arbitration: The International Journal of Arbitration, Mediation and Dispute Management (Ciarb), Volume 90, Issue 4 (2024)

Stavros Brekoulakis (General Editor International Journal of Arbitration, Mediation and Dispute Management; Queen Mary University of London), Mercy McBrayer, Mohamed Sadiq (Chartered Institute of Arbitrators), Mary Mitsi (Queen Mary University of London), Ahmed El Far (Three Crowns), and Kabir A.N. Duggal (Columbia Law School) · Sunday, December 15th, 2024

It has been a distinct honour to serve as the Editor-in-Chief of the Journal over the last seven years.

In my first editorial, I was commenting on the remarkable evolution that the field of international arbitration has undergone in the last forty years both in terms of practice and scholarship. Arbitration's evolution has intensified during the time of my editorship and has influenced the ways in which public discourse on arbitration is currently conducted. While originally the new ideas in international arbitration were introduced mainly by a few academic reviews, today's thought-leadership takes a variety of forms. Important discussions on international arbitration are formulated at an ever-increasing number of conferences, symposia, and events; keynote addresses set out thought-provoking proposals; the number of journals and reviews specializing in international arbitration has greatly proliferated; and even online blogs produce short yet interesting posts. It is through all these different forms of publications that today commentators engage intellectually with the global community to develop our understandings of arbitration doctrine and practice.

As a result of the proliferation of commentators as well as of the means and forms of publication, the space of public discourse in international arbitration has become significantly crowded. I am proud that, against this evolving background, the Journal maintained its distinct identity, expanded its audience, and continued to contribute to the practice and scholarship of arbitration. I am even prouder that the Journal has, all these years, been a forum of truly diverse authorship giving space to both distinguished commentators and new voices from around the world.

As I am stepping down as the Journal's Editor-in-Chief, I want to thank my deputy editors and the editorial board. It has been a pleasure working with them and I look forward to collaborating again in the future. More importantly, I look forward to seeing the Journal's continuous success under its new editorship.

Stavros Brekoulakis, Editor-in-Chief

We are happy to report that the latest issue of *Arbitration* is now available and includes the following:

ARTICLES

Steve NGO, Arbitration and the Rule of Law: Preserving, Protecting and Proportionality

The importance of international commercial arbitration today cannot be overstressed. Arbitration offers parties in cross-border disputes a neutral and private forum to resolve their disputes, therefore avoiding potentially partisan or inefficient court litigation systems. In arbitration, laws and rules may be drawn from a variety of sources, such as national laws, international treaties, and institutional rules which are based on the principle of the rule of law and are intended to ensure a fair and just conduct of dispute resolution. This article therefore discusses the importance of the rule of law in arbitration, evaluating how arbitration already defends the rule of law and provides some thoughts about balancing the rule of law in arbitration to avoid an antithetical outcome.

Ansh GOYAL, The Validity of an Arbitration Clause in a Deficiently Stamped Agreement: A Comment on the Seven-Bench Judgment

This case note seeks to analyse the judgment of the Supreme Court of India in its upholding of the validity of an arbitration clause in a contract not duly stamped. The ruling is unique, as the issue was taken up for the sole reason of bringing clarity to the matter by a seven-judge bench through a curative petition of the *Dharmaratnakara Rai Bahadur Arcot Narainswamy Mudaliar Chattram v. Bhaskar Raju* judgment. The subject matter of this case had already been decided by a five-judge bench in *N.N.Global Mercantile Pvt. Ltd. v. Indo Unique Flame Ltd.*, CIVIL APPEAL NO(S). 3802–803 of 2020. The note analyses the final decision by the honourable court through its interpretation of the legislation involved and the doctrines applied. The note's reference to the previous judgment also brings a clearer picture showing the application of the present judgment. Through a careful analysis, the note demonstrates how the Supreme Court's decision can be seen to bring a progressive stance to the law and practice of arbitration in India and the significance thereof.

Morgan MWENDA, Regional Arbitration Centres for Investor Protection

African integration is progressively strengthening regional ties and offering new economic opportunities. However, increased integration also portends increased conflict in the nature of trade disputes and civil matters generally. This article critically analyses the extant conflict resolution mechanisms under the Africa Continental Free Trade Area (AfCFTA) Protocol, noting its strengths and weaknesses. This article then identifies the lack of a private dispute resolution mechanism under the protocol, suggesting that the current institutions may fail to provide the requisite judicial security for settling trade disputes in the continent, and thereby erode gains made in integration. Finally, the article concludes by addressing the state of regional arbitration institutions and proposing their suitability as an antidote to the looming crisis. The author therefore offers a continental framework for implementing uniformity and security through a network of regional

arbitration institutions.

Aanchal GUPTA, Litigating the Arbitration Clause: Considering Uber-Driver Arbitration in India

In Canada, hundreds of Uber drivers came together for a class action lawsuit against Uber seeking benefits under Ontario employment laws. A motion was brought by Uber to stay the proceedings in favour of arbitration in the Netherlands in accordance of their UberEats service agreement signed by the drivers, the terms of service which form part of standard form non-negotiable agreements. The Canadian Supreme Court held such an arbitration clause invalid, largely on the ground that it was part of a ‘standard form contract’ that was ‘non-negotiable’ and ‘realistically unattainable.’ Companies that include a mandatory arbitration clause with such standard form contracts are increasingly facing lawsuits across jurisdictions. Enforcing such arbitration clauses with users have had mixed success, leading to business uncertainty and raising transaction costs due to litigation across jurisdictions. This article explores implications of decisions across jurisdictions regarding such arbitration clauses in the Indian context. The article then argues for a universal harmonization of rules from a global perspective by formulating a general principle to afford certainty to businesses operating at a global level.

LECTURE

Emilia ONYEMA, Corruption, Access to Arbitration for Local Communities: Mitigating the Cost of Corruption and Providing Access to Justice for Local Communities

A written reflection of CIArb’s 2024 Roebuck Lecture, this paper, in the context of the *Nigeria v. P&ID* decision, examines the impact of corruption in arbitration on local communities, and suggests some remediation in arbitration and shift by the global arbitration community from prosperity, planet, and people, to people, planet, and prosperity as enunciated by the UNSDGs.

BOOK REVIEW

***Peter Doraisamy & Pranav V. Kamnani: Contemporary Issues in Mediation: Volume 8* edited by Joel Lee et al., 2023 (Singapore: World Scientific Publishing Co Pte Ltd. 115pp. USD) ISBN: 978-981-12-8524-0 (hard book) ISBN: 978-981-12-8526-4 (e-book)**

This book review of *Contemporary Issues in Mediation: Volume 8* (2023) critically examines a collection of nine essays addressing novel and pressing challenges in modern mediation practice. The book explores diverse themes such as the implementation of the Singapore Convention on Mediation, mediator ethics, and family dispute mediation. It provides valuable insights into practical, socio-political, and legal complexities surrounding mediation, offering a compelling argument for its growing prominence over arbitration. The review highlights the authors’ deep engagement with issues like confidentiality, party autonomy, and mediator well-being, while presenting potential solutions for the evolving mediation landscape.

The Editor welcomes the submission of articles for consideration for publication in the Journal. All prospective contributions should be in accordance with the guidelines set out [here](#).

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The image is a promotional graphic for a survey report. It features a dark background with a circular inset showing a gavel on a surface of glowing blue and red digital lines. The text is white and blue. At the top left, it says '2024 Future Ready Lawyer Survey Report'. Below that is the main title 'Legal innovation: Seizing the future or falling behind?'. A blue button with white text says 'Download your free copy →'. At the bottom left is the Wolters Kluwer logo. At the bottom right is a white box with the 'FR Future Ready' logo and the word 'LAWYER' below it.

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