Kluwer Arbitration Blog

Interview with Our Editors: In Conversation with Prof. Dr. Christopher Kee, Co-Director of the Willem C. Vis International Commercial Arbitration Moot

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Many arbitration practitioners nowadays trace their initial interest in arbitration back to their student days, when they competed at the world's largest and most renowned law student competition in the field of arbitration – the Willem C. Vis International Commercial Arbitration Moot. Created in 1993 by Prof. Dr. Eric E. Bergsten, the Vis Moot fosters the study of international commercial law and arbitration and provides practical training to students for resolving international business disputes. However, the Vis Moot has achieved much more than its original goals. As mentioned at the opening ceremony in March 2024, the Vis Moot has changed the professional and personal lives of countless mooties, in addition to becoming a staple event on the arbitration calendar.

For the past 12 years, the Vis Moot has been masterfully organized by three Directors, Prof. Dr. Christopher Kee, Prof. Dr. Stefan Kröll, Mag. Patrizia Netal, for the Moot Association, which is now chaired by Assoc. Prof. Dr. Patricia Shaughnessy. Today, we have the pleasure of speaking with Prof. Kee.

Prof. Kee has been associated with the Moot since 1999 when he participated in the 6th edition of the competition as a student on the team at Deakin University. Prof. Kee is the Chairperson of Academic Senate, and Dean (Education) in the College of Business, Government and Law at Flinders University, Australia. He joined Flinders University from the University of Aberdeen, where he was Dean of Post Graduate Taught Studies for the Arts, Humanities, Social Sciences and Business. Before that he worked at the University of Basel and Deakin University, and has held appointments as an Honorary Fellow of Deakin Law School, Australia, and as an Adjunct Professor at the City University of Hong Kong. Prof. Kee is also a past Co-Chair of AFIA (Asia Pacific Forum for International Arbitration).

Prof. Kee, thank you for joining us on the Kluwer Arbitration Blog! We are thrilled to have this opportunity to share your story and perspectives with our readers.

1. ***By way of introduction, could you please explain how you came to be involved in the Vis Moot as one of its Directors?***

I was really lucky to be part of the Deakin Team in the 6th Moot, and knew from that experience that I wanted to remain involved with international arbitration and international commercial law. But I was going home to work in a small suburban law firm in Melbourne, so to stay in touch I became active in the Moot Alumni Association (MAA). Being part of the MAA leadership meant I got to know Prof Bergsten and, over the years, worked behind the scenes helping to transition the Moot's organisation from paper to online. It was a great honour when Prof Bergsten asked me if I would step up into a Co-Director role.

2. ***You are presently the only Director who has participated in the Vis Moot as a student (at the 6th edition), and the only one who is common law-trained. What impact, if any, has this background had on how you approach your role as a Director and the Vis Moot more broadly?***

My experience as a student and being common law-trained has meant that I can bring those perspectives to our collective decision making, but I do not think that it has ever really changed anything that we have done. All three of us are very internationally-minded and are very keen to ensure we promote the great diversity the Moot offers.

3. ***Though a certain dose of mystery adds to Vis Moot's magic, what can you tell us about the "behind the scenes"? For example, how are the teams paired (is it totally random, or are there some factors that are considered when making pairings)? Other than avoiding conflicts of interest, are there any considerations when arbitrators are assigned to judge certain teams? What coordination, if any, is there with the Vis East?***

In the early days Prof. Bergsten did the team pairings one by one. It was a huge job, because there are a number of considerations that we keep in mind. We always try to ensure that teams meet other teams from both common and civil law jurisdictions, and not moot against another team from their own country. We also try to ensure that teams only moot once on each day of competition. However, as the number of teams has grown and continues to grow, that has become harder and harder. We have built an IT platform that assists with the pairing, but there are also external factors which we need to consider. For example, we don't get the same number of common and civil law teams, we have different numbers of rooms available on different days, we have some teams drop out very near the oral hearings…. It is a little like doing a jigsaw puzzle where the picture keeps changing.

Arbitrators are asked to identify their conflicts of interest in their accounts. This creates flags in our system so that we can avoid conflicts when scheduling. Aside from the usual conflicts of interest, we have time conflicts to manage because a number of our arbitrators are also coaches. When composing the panels we try to ensure a range of experience, both in terms of years of experience, but also legal background. Then there is also the issue that not all arbitrators are available in each time slot. Arbitrators tell us what time slots they can assist in and we work with the lists that we have available at any one time.

The Vis East is our sister moot, and although it is run separately by Ms. Louise Barrington and Ms. Sherlin Tung and their team, we co-ordinate and liaise with each other on interconnecting issues.

4. ***During your mandate as Director, the number of participating teams has more than doubled and there are no signs that this growth will slow down anytime soon. Are there any concerns that, at some point, the number of teams will grow to such an extent that managing them all in Vienna will become more challenging? If so, do you have any thoughts on how that potential issue may be addressed?***

The growth has been phenomenal and is something that we are really proud to see. As Directors, we have sought to future-proof the growth of the Moot as much as we can. It is very unlikely we would ever exceed the capacity of the online platform in terms of the number of teams. Our likely challenges are physical ones, such as having enough space for everyone. We are very lucky to have the generous support of a number of law firms in Vienna, and the wider Austrian arbitration community, who volunteer not only time but space.

5. ***Apart from your involvement in academia, you also participated in the UNCITRAL Arbitration Rules revision process from 2007 to their completion in 2010 as a representative of APRAG (Asia Pacific Regional Arbitration Group), and you also served on the ACICA (Australian Centre for International Commercial Arbitration) Rules Drafting committee in the past. Are there any particular features of the ACICA Arbitration Rules (2021) that make them more attractive to the parties as opposed to the UNCITRAL Arbitration Rules (which may also be used in arbitrations administered by ACICA)?***

There were some very interesting developments in ACICA Arbitration Rules (2021).

1. Article 16 (Consolidation of Arbitrations): The requirement that consolidation occur between the same parties has been deleted. This allows for flexibility where there are, eg, upstream and downstream contracts to be consolidated where appropriate.
2. Article 54 (Third Party Funding): Disclosure of third party funding, which is not in itself unique, but the Rules also specify in Article 48(d) that third-party funding costs can be considered costs of the arbitration.
3. Article 55 (Other Alternative Dispute Resolution): There is now a requirement for the Tribunal to raise for discussion the use of mediation / alternative dispute resolution with the parties.

6. ***Prof. Kee, you have lectured on the CISG in various common and civil law jurisdictions, some of which are not parties to the CISG. In your view, what impact, if any, has the Vis Moot had on the use of the CISG as an applicable law in arbitrations? While there may be some debate on whether arbitrators are bound to apply the CISG, would you encourage its use?***

I think it is fair to say that it is beyond question that the Vis Moot has brought significant awareness of the CISG to quite literally generations of law students all over the world. By my count, the CISG has entered into force in 61 states since the 1st edition of the Vis Moot. That is roughly a third of the current number of Contracting States. When we look back at the intent and origins of the Moot, promotion of the CISG was very definitely an important purpose. Whether it has impacted the use of the CISG as an applicable law is not an easy question to answer. I do hope

and believe that the Moot has better enabled counsel and arbitrators to understand when and how the CISG is or may be applicable to their arbitrations.

7. ***Finally, as the students have submitted their memoranda, and are now mastering their oral advocacy skills, what advice would you like to give them?***

Firstly, congratulations to all of you for the work you have already undertaken. The Moot is probably the most lifelike experience you will have during your studies. Working at a high level to real deadlines.

All the work you have done for the Claimant and Respondent memoranda has been foundational – but really only foundational – now you are building on it. Your arguments will evolve significantly over the coming weeks. You should enjoy that and always try to think outside the box.

Thank you for your time and perspectives – we wish you continued success!

This interview is part of Kluwer Arbitration Blog's "Interviews with Our Editors" series. Past interviews are available here.

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