Kluwer Arbitration Blog

LIDW 2025: International Arbitration Day—Exploring Different Approaches on Promoting Arbitration

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On International Arbitration Day, London International Dispute Week ("LIDW") featured panels that explored how courts and institutions can promote and strengthen arbitration, as well as how pivotal projects can benefit from it.

This post highlights two panels hosted by Simmons & Simmons and Squire Patton Boggs, which focused on the approaches courts can take to support arbitration (see **here** for additional coverage of other events that discussed the role of institutions in enhancing efficiency in arbitration and its significance for pivotal projects).

Simmons & Simmons hosted a discussion focused on identifying the characteristics of an ideal arbitral seat, while Squire Patton Boggs addressed the challenges of arbitrating disputes involving States and State-owned entities. Both panels engaged with fundamental questions about how arbitration should be conducted and how courts and institutions can support and safeguard its development.

An Ideal Seat? Perspectives From Established and Emerging Seats

The session "An Ideal Seat? Perspectives From Established and Emerging Seats" sparked a thought-provoking discussion on the seat of arbitration. The panel analysed what established seats have done well, explored various tools that emerging seats such as Malasia, Ruanda, Abu Dhabi, and Dubai may utilise to foster the development of arbitration, and examined the challenges both emerging and established seats are likely to face. The session was moderated by Professor **Emilia Onyema** (SOAS), and featured contributions from **Stuart Dutson** (Simmons & Simmons), **Nadia Nicolaou** (Opus 2), **Dipen Sabharwal** (White & Case), and **Catherine Schroeder** (Schroeder Arbitration).

Main Characteristics of Well-Established Seats

The session began with Professor Emilia Onyema outlining key elements of successful seats of arbitration: a judiciary that is supportive of arbitration, accessibility, safety, strong ethical standards, pro-enforcement measures of both agreements and awards, arbitrator immunity, and technological advancement. Onyema also noted that a judiciary supportive of arbitration must possess various qualities, and that this is not a question with a simple answer.

The discussion continued with Dipen Sabharwal sharing impressions of what makes a good seat. Drawing on findings from the 2025 Queen Mary University of London International Arbitration Survey in partnership with White & Case, he highlighted common factors influencing parties' choice of seat: supportive courts, progressive and modern arbitration legislation, and sustainable enforcement of arbitral agreements and awards. He also pointed to a common preference among parties to stay within their own region. Onyema added that a home advantage can evolve into a regional advantage, particularly where significant economic activity is concentrated, citing Singapore as an example.

Catherine Schroeder was then faced with the question of whether Paris qualifies as an ideal seat and offered three key reasons in support of a direct positive response: France's arbitration-friendly framework (reference was made to delocalisation), limited interference by state courts, and easy enforcement process. She further highlighted the role of "*juges d'appui*" (or "supporting judges"), who step in when institutional rules are silent or to secure assets or evidence, without interfering with the substance of the dispute.

Stuart Dutson provided insights into London as a seat of arbitration, emphasising its long-standing reputation for delivering high-quality arbitrators, experts, and facilities. Dutson added that the LCIA has shown strong interest in adopting new technologies, reinforcing London's position as a leading seat.

Sabharwal highlighted that users often associate the seat with the arbitral institutions, despite the technical distinction between seat, venue, and *lex arbitri*. Therefore, especially when drafting last-minute clauses, the quality of the service offered by arbitral institutions plays a decisive role.

Tools for Emerging Seats to Build Up Reputation

Nadia Nicolaou offered the perspective of emerging seats, starting by underscoring the influence arbitral institutions have on parties' decisions. She put emphasis on the importance of technological innovation in enhancing reputation. For instance, jurisdictions in the Middle East have gained traction using technology as a differentiator, with some laws including express provisions on virtual arbitrations and overall trying to stimulate implementation of technology.

The panel then explored non-conventional strategies that emerging seats might use to bolster reputation. For instance, Sabharwal mentioned putting financial and political support could be justified by the economic benefits of becoming a reputable arbitration seat. Singapore was mentioned as a case where government funding has played a significant role. Another approach was encouraging State-owned companies to select the home seat for resolving disputes, thereby promoting popularity.

Role of AI

Further, artificial intelligence ("AI") was identified as a tool for increasing efficiency and reducing time and costs, which are key considerations when deciding whether to opt for arbitration. The use of AI in transcription was cited as beneficial in jurisdictions such as India. Further, the absence of provisions on AI in both the English Arbitration Act and French law was noted, although a market trend towards innovation was recognised to exist, driven by the need to uphold London and Paris as reputable seats.

Final Remarks

In closing, Onyema emphasised that while States have a role in promoting arbitration, this involvement must be balanced to preserve neutrality. She also noted that established seats will continue evolving, particularly through the adoption of new technologies. Finally, she advised a focus on cultivating domestic trust initially, as a foundation for future credibility in international disputes.

Challenging Sovereignty: Arbitrations Against States and State-Owned Entities

From another standpoint, Squire Patton Boggs opened its Arbitration Day with a keynote followed by a panel discussion titled "Challenging Sovereignty: Arbitrations Against States and State-Owned Entities." The keynote was delivered by the Honourable **Mrs Justice Cockerill**, who explored the evolution of state immunity under customary international law—from its origins in wartime diplomacy to its modern application in commercial and arbitral contexts.

Keynote Speech: Evolution of State Immunity Acceptance in Domestic Courts

Justice Cockerill highlighted how courts have shifted from a "hyper-cautious" stance to a more pro-arbitration and enforcement-oriented approach when dealing with state immunity claims. When States engage in commercial contracts, they should be treated like any private party, citing *Deutsche Bank v Central Bank of Venezuela* as a key example. However, she noted that questions remain about how courts should respond in situations where there is no commercial clause or express waiver of the State's immunity.

In *Infrastructure Services Luxembourg v Spain*, the Court held that Article 54 of the ICSID Convention constituted a sufficient agreement to arbitration, even without explicit waiver language. However, when a similar argument was made in *CC/Devas v India (I)* in relation to the New York Convention, it was not accepted.

Finally, Justice Cockerill cited *Hulley v Russian Federation* as an example of the English courts' pro-enforcement stance, having rejected Russia's sovereign immunity defence. Justice Cockerill concluded by stressing that state immunity, as a product of customary international law, should evolve in line with global trends. In *Hulley*, the English court drew on decisions from other jurisdictions to shape its reasoning, suggesting a growing international consensus.

Challenges for States and Investors: Facing the Criticism through Procedural and Substantive Reforms

The keynote was followed by a panel moderated by **Naomi Briercliffe** (Squire Patton Boggs), featuring on the state side **Saddy Sevingi** (Government of Tanzania) and **Tanishtha Vaid** (International Legal Affairs of the Presidential Court of the United Arab Emirates). Representing investors was **Ianis Girgenson** (United Group), while **Francisco Abriani** (ICSID) offered an institutional viewpoint.

The panel began by addressing criticisms of the investor-State dispute settlement ("ISDS") system, starting with three main concerns: (1) the limited space for States to regulate in the public interest, citing land reform and post-apartheid measures deemed discriminatory in African states; (2) inconsistent treaty interpretation, particularly of Fair and Equitable Treatment ("FET") clauses; and (3) the lack of diversity among arbitrators. Even though African States are involved in 15% of

disputes, arbitrators are rarely of African origin. Saddy Sevingi echoed these concerns, emphasising the need for regulatory space and greater representation of African arbitrators to ensure cultural and contextual understanding.

Tanishtha Vaid added a Middle Eastern perspective, criticising the tribunal's reluctance to apply the mechanism of early termination of cases that are manifestly without legal merit, according to ICSID Rules 41(5) and 41. According to Vaid, the continuance of frivolous claims raises the financial burden that States face with investor-State arbitration.

Ianis Girgenson brought the investor's perspective, defending the relevance of ISDS for the protection of costly investments. In Girgenson's perspective, the concern related to frivolous claims did not match the reality of all investors, since claims undergo rigorous internal scrutiny due to their high cost and risk.

Francisco Abriani brought a neutral ground to the discussion, outlining ICSID's recent reforms intended to address some of the main criticisms of ISDS. Abriani highlighted measures for efficiency, such as control of timelines, cost allocation based on party conduct, prompt arbitrator disqualification procedures, and transparency measures such as disclosure of third-party funding and default publication of awards.

Sevingi welcomed these reforms as steps towards greater accountability and cost efficiency. Vaid made a counterpoint, questioning who ensures compliance regarding third-party funding disclosures.

The panellists noted that States' main concerns lie in the substantive provisions of investment treaties, which often favour investors. The panel discussed modern BIT trends, such as removing FET clauses, requiring exhaustion of local remedies, banning third-party funding, and imposing obligations on investors. However, Vaid warned that these efforts, while aiming to rebalance power, risk fragmenting treaty law and hindering legal coherence.

Despite ongoing challenges, the session ended on a positive note. Abriani shared a study showing that of 109 arbitration cases, 90% were voluntarily enforced, and 7% enforced through courts, suggesting strong compliance and some optimism in ISDS. The session ultimately echoed the keynote's message: while significant progress has been made in holding States accountable through arbitration, the journey is far from over—for States, investors, and courts.

Conclusion

Overall, both panels addressed essential attributes of effective arbitration seats from differing perspectives. The discussions reaffirmed that efficiency, cost-effectiveness, and ease of enforcement remain central to parties' choice of seat. These elements, whether in established or emerging jurisdictions, continue to define what makes a seat attractive and credible in the evolving landscape of international arbitration.

This post is part of Kluwer Arbitration Blog's coverage of London International Disputes Week 2025.

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This entry was posted on Thursday, June 5th, 2025 at 8:45 am and is filed under Artificial Intelligence, LIDW 2025, Sovereign Immunities, UK
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