Kluwer Arbitration Blog

2025 LIDW: The Role of Dissent in Arbitral Proceedings: Disruption or Dialogue

Pritam Dumbré and Ariane Fuller (Queen Mary University of London) · Sunday, June 8th, 2025

On 4 June 2025, Gatehouse Chambers and Elkinson, in collaboration with Clyde & Co, hosted a panel discussion examining the rare yet intricate phenomenon of dissenting opinions in arbitral proceedings. Convened in accordance with the Chatham House Rules and moderated by Frederico Singarajah (Gatehouse Chambers), the session brought together a distinguished panel comprising Jeffrey Elkinson (Carey Olsen), Professor Loukas Mistelis (Clyde & Co), Gretta Walters (Chaffetz

Lindsey), and Niamh Leinwather (VIAC).

The discussion sought to explore the meaning, underlying causes and practical implications of dissenting views expressed within arbitral tribunals. While acknowledging the value of judicial independence and doctrinal clarity; the panel also addressed the layered challenges dissenting opinions can introduce—ranging from enforceability concerns to perceptions of tribunal disunity. The speakers reflected on whether such differences enrich arbitral jurisprudence or undermine finality, and deliberated on some possible approaches for navigating this complex aspect of arbitral decision-making.

Making Sense of Why Arbitrators Issue Dissenting Opinions

The panel began delving right into the evolving nature and expression of dissenting opinions in arbitral proceedings. At the heart of the discussion was a deceptively simple question: if dissenting opinions do not constitute part of the award, then what precisely are they? The enquiry gradually expanded into a broader consideration of both form and substance, examining whether dissenting opinions should be presented as standalone documents or incorporated into the final award, and whether the identity of the dissenting arbitrator ought to be disclosed or is it best left anonymous. These questions garnered varying perspectives from the participants, reflecting the lack of consensus that continues to characterise this domain.

Drawing from their professional experiences, the panellists then turned to the possible causes behind such dissents. In some cases, they noted, dissents tend to arise from friction and misunderstandings between fellow arbitrators and also perhaps because of the lapses in communication as not all arbitrators may be on the same page in terms of understanding the case file. In others, they observed, dissenting opinions may serve as a principled stand—articulating a different reading of the law or safeguarding personal integrity where an arbitrator is unwilling to endorse an outcome perceived as flawed or, in extreme instances, even tainted.

Although the concept of dissent itself is relatively straightforward, the timing of its emergence adds another layer to the conundrum. According to the panellists, dissenting views tend to surface most commonly during the final stages of proceedings, just as the tribunal moves towards the issuance of the award. When raised at this point, dissent can have particularly disruptive consequences—potentially stalling the process and raising further questions about cohesion and enforceability.

By the end of the first session, the panel briefly considered whether dissenting opinions are influenced by the U.S. legal tradition. This included assessing whether arbitrators from common law jurisdictions may be more inclined to issue them, given their familiarity with such practices and whether civil law arbitrators might be relatively less inclined to do so.

Ultimately, the panel concluded that dissenting opinions are issued by arbitrators across jurisdictions, regardless of being one in common or civil law. Rather than reflecting jurisdictional traditions, dissenting opinions appear to be more a feature of arbitration itself than a by-product of legal background.

Implications of Dissenting Opinions and Its Different Uses

The participants debated, firstly, the repercussions of a dissenting opinion, examining its scale and magnitude in terms of the impact it may have upon the proceedings. It was noted, secondly, that such an unwelcome addition to the process may inadvertently lead to delays and increased costs. Furthermore, it often results in additional cross-examination of evidence and can evolve into a logistical challenge, particularly in cases involving voluminous documentary records, as is common in most commercial arbitration cases. Another drawback discussed was the potential for misuse, as parties may exploit dissenting opinions as a form of guerrilla tactic, seeking to resist or manipulate the arbitral process, sometimes even exerting pressure on the tribunal. Finally, the most concerning consequence identified was the reputational damage that dissenting opinions may cause to arbitrators, whose credibility and impartiality risk being called into question in such circumstances.

Averting the Diverging Opinions Crisis: Mitigation and Measures of Safety

In the next phase of the discussion, the participants proposed exhaustive remedies that could assist in resolving such deadlocks when they arise. In the context of potential solutions, the panel considered the role of the duty of disclosure, which, if invoked, may place the tribunal in an awkward position. It was noted that the most critical role in such situations is often played by the arbitral institution itself. As the body that receives and reviews the award, the institution holds the discretion to disclose dissenting opinions in a manner that is both diplomatic and balanced. One panellist observed that, in certain instances, institutions have chosen to render an award despite a dissenting opinion by framing it as a majority award, thus, striking a careful balance between the duty of disclosure and the need to uphold confidentiality and enforceability. Institutions herein were also described as a form of safety net, with the chairperson of the tribunal playing a pivotal role in managing the dynamics among arbitrators and restoring procedural coherence.

On a more operational note, it was remarked—much to the audience's amusement—that misunderstandings can sometimes arise from an arbitrator's delayed pace in reviewing case materials. As such, dispute resolution professionals are well advised to remain thoroughly familiar with all submitted evidence and to stay abreast of any recent developments in the matter. In multi-member tribunals, divergent opinions are not uncommon, especially given the inherent subjectivity involved in interpreting soft law provisions. However, for the sake of brevity and procedural efficiency, co-arbitrators must strive to identify common ground and move towards consensus.

Towards the end of this phase, the discussion was directed towards regulation of the process given a question from the attendee. The panellists expressed a general reluctance toward codification or formal legislative intervention on the issue. This hesitation, they explained, stems from the concern that excessive regulation could unduly constrain the process and limit the autonomy of both parties and tribunals, thereby undermining the very tenets of arbitration. As the group reflected on whether overregulation is truly desirable, a consensus began to form around a more measured approach. The panellists proposed that soft law instruments offer a more suitable path forward as they are capable of addressing the core concerns without imposing rigid frameworks. These provisions, it was suggested, preserve the necessary flexibility while promoting clarity and best practices in a manner that is neither prescriptive nor intrusive.

Conclusion

Fittingly, the session on dissenting opinions concluded with a final note of dissent when a contributing member expressing a critical view of the entire discussion, perceiving dissent in arbitration as largely problematic. Yet, the broader reflection acknowledged that dissenting opinions need not carry a negative connotation. On the contrary, they may serve an important function: giving voice to minority perspectives and ensuring that no arbitrator, or by extension, no party for that matter, feels stifled or overridden. In this way, dissent may offer a measure of transparency, acting as a release valve that prevents frustration from accumulating, which might otherwise manifest as overt or passive resistance to the award.

Moreover, dissenting opinions may safeguard the principle of natural justice by reinforcing that all voices are duly heard and considered, particularly in complex or contentious proceedings. One panellist noted that, in some cases, a dissenting opinion may ultimately prove inconsequential, having no bearing on the outcome or enforceability of the award. Regardless, the importance of a strong chair, an even-tempered tribunal, and a shared commitment to the integrity of the arbitral process cannot be overstated. These elements are essential to ensuring that dissent does not lead to descent nor to the derailment of proceedings, but instead remains a constructive feature of deliberation.

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

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