

Kluwer Arbitration Blog

The Contents of Arbitration: The International Journal of Arbitration, Mediation and Dispute Management (Ciarb), Volume 91, Issue 2 (2025)

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In its second issue of the year, *Arbitration* continues to target and engage with pressing questions that lie at the heart of international dispute resolution.

Alongside a collection of contributions on a variety of themes, issue 91.2 features a standout contribution from Claudia Salomon, President of the ICC Court of Arbitration, whose 2024 Alexander Lecture addressed the role of arbitral institutions in protecting the integrity of the arbitral process, promoting the rule of law, and providing access to justice.

In her editorial introduction to this issue, Professor S.I. Strong highlights the importance of Salomon's remarks, where she posits that arbitral institutions must and do serve a greater purpose by ensuring access to justice, promoting the rule of law, and protecting the integrity of the arbitral process.

Underscoring arbitration's importance as an integral part of the civil justice system, Professor Strong writes:

Though some scholars take the view that judicial dispute resolution is superior to and separate from private dispute resolution processes, efforts to downplay the importance of arbitration and related mechanisms are problematic for several reasons.

First, purely public forms of dispute resolution would be overwhelmed if all of the disputes heard in private processes were returned to the courts. Judges around the world are already overworked, and few countries would be willing or able to hire more judges to hear matters that are currently resolved in arbitration and mediation. Because justice delayed is justice denied, private forms of dispute resolution are necessary if a country is to ensure reasonable access to justice.

Second, arbitration is functionally similar to litigation in a way that mediation is not.

For example, arbitration operates strictly within the law, recognizing only those rights and remedies that would be available in court. In so doing, arbitration must live up to certain procedural standards akin to what is required in court, what some commentators have called “procedural *jus cogens*.” These fundamental features result in a system that promotes the rule of law as a matter of both substance and procedure.

Finally, arbitration provides parties with a safe and predictable dispute resolution mechanism in jurisdictions where the judiciary suffers from systemic challenges such as corruption or political intimidation. Confidence in the judicial system may also begin to erode if judicial actors are seen to mis- or over-use artificial intelligence (AI). Empirical studies have recently identified a number of problems associated with generative AI, including issues associated with automation bias, cognitive loafing, and AI addiction, and parties may want to have their disputes heard in private processes that allow disputants to tailor the use of AI by advocates and adjudicators. Arbitral institutions are already assisting in this process by providing guidance (such as the Ciarb Guideline on the Use of AI in Arbitration) that will ensure the integrity of the arbitral process while simultaneously promoting appropriate party autonomy.

This issue of *Arbitration* also includes several articles that deal with issues relating to the legitimacy of private dispute resolution, and other practical problems which arise in dispute resolution.

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

ARTICLES

Theresa FENNER, *What is the Impact of Annulment Decisions at the Seat of Arbitration on the Enforcement of Arbitral Awards Internationally? The German vs. the French Approach*

Annulment of arbitral awards at the seat is one of the grounds on which the international enforcement of awards may be refused under Article V(1)(e) of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention). Annulment proceedings at the seat may result either in a decision to set aside an award or in a decision to confirm the award. However, the impact of annulment decisions courts at the seat of arbitration on the international enforcement of awards is not clear. There have been two main approaches to resolving this issue—the classic and the internationalist—and there are also voices in between. Given the ambiguity and differing approaches, there is a great need to clarify.

This article explores how different jurisdictions approach the enforcement of arbitral awards that have been set aside at the seat of arbitration. It focuses in particular on Germany and France, two countries often viewed as taking contrasting positions on this issue. Additionally, the impact of foreign annulment decisions confirming the award on enforcement proceedings in Germany and France is analysed and compared. This is a highly topical issue, as the German Federal Court of Justice (Bundesgerichtshof – BGH)’s decision I ZB 33/22, in which the BGH had to rule on the

issue for the first time, has triggered a major debate in the country. This article also examines whether a new approach is necessary, and if so, what form that approach might take. It concludes that as the place of enforcement is crucial, lawyers must take into account the attitude of the courts in the country where enforcement is sought, as attitudes may differ considerably from one country to another, and thus drastically different outcomes for their clients.

Emad HUSSEIN, *AI Meets Mediation: Shaping the Future of Dispute Resolution in a Digital World*

Commercial mediation is evolving with the rapid advancement of artificial intelligence (AI), which is reshaping the traditional boundaries of dispute resolution. As the volume and complexity of commercial disputes grow, AI-driven tools are emerging as valuable assets in mediation, offering enhanced efficiency, consistency, and cost savings. This article explores how AI is currently transforming mediation, focusing on applications such as predictive analytics, virtual mediation platforms, and automated document review. While AI does bring substantial benefits, it also introduces ethical and operational challenges, including risks related to algorithmic bias, confidentiality, and the limitations of AI in addressing the human dimensions of conflict. These issues are critical to ensuring that AI's role in mediation is both responsible and effective. By examining practical case studies and analysing the impact of AI on time, cost, and outcome quality, this article provides a grounded view of AI's integration in real-world mediation settings.

It also highlights both its transformative potential and the careful approach required to optimize its use.

Eva LITINA, *Diversity in International Arbitration and the Role of Arbitration Institutions*

In recent years, there have been many discussions and surveys on the lack of diversity in the wider field of international arbitration as well as numerous initiatives aiming to promote the inclusion of women, younger arbitrators, and different racial groups. However, diverse and underrepresented groups still face many obstacles. This article focuses on diversity in the international arbitration context and presents the available data on arbitrator appointment and diversity of the most prominent arbitration institutions. It then identifies the key barriers to entering the arbitration field. Based on the data, the article evaluates the role and initiatives of arbitration institutions and the arbitration community in further promoting diversity and proposes ideas to strengthen diversity.

Rajarshi SINGH, *Case Review: Asiana Airlines LTD. V. Gate Gourmet Koreana LTD. & Ors.*

The right of a non-party to seek anti-suit injunction is a vexed question in international arbitration discourse. This article examines such an issue which arose before the Singapore Court of Appeal, yet with an interesting twist to address the particular question: can an anti-suit injunction be extended to a non-party to shield a contracting party from consequential liability of a foreign judicial proceeding brought in breach of an arbitration agreement? In a significant ruling that may potentially shape the debate surrounding this topic, the Singapore Court of Appeal has crystallised the position with respect to the issuance of anti-suit injunctions, including its availability for non-

parties to an arbitration agreement. This decision therefore builds upon the existing international jurisprudence concerning the basis for the grant of such injunctive relief to both parties and non-parties, and provides clarity with respect to the extent of legitimate judicial intervention.

Claudia SALOMON, *Guardian, Gatekeeper, or Guide: The Role of Arbitral Institutions in Protecting the Integrity of the Arbitral Process, Promoting the Rule of Law, and Providing Access to Justice*

BOOK REVIEWS

Gordon BLANKE: *DIFC Courts Practice*, edited by Rupert Reed KC, and Tom Montaigne-Smith KC (Edward Elgar, 2024), 1184 pp., £355.00, ISBN: 978-1-80392-544-8

Gordon BLANKE: *Lawyer, Scholar, Teacher and Activist: A Liber Amicorum in Honour of Derek Roebuck*, edited by Neil Kaplan, and Robert Morgan (Holo Books, 2021), 555 pp., £35.00, ISBN: 978-0-9572153-9-9

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