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PARISARBITRATIONWEEK

SPECIAL EDITION

7-11 April 2025

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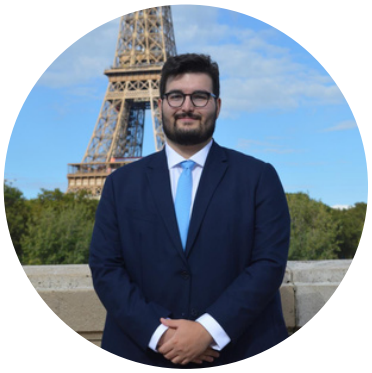

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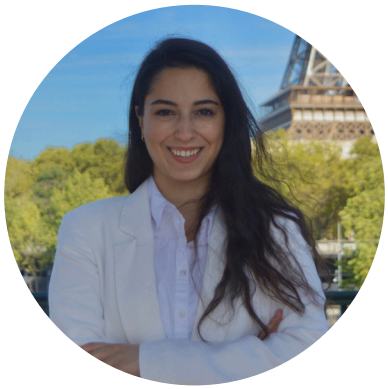

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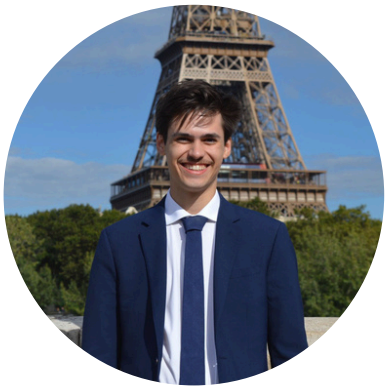

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FOREWORD

Dear Readers of the PBA *Biberon*,

It is with great pleasure and honour that we present this year's *special edition* of the *Biberon*, dedicated to the 2025 Paris Arbitration Week ("PAW"). For the fifth consecutive year, we have partnered with the PAW Board to cover a wide range of the week's events, capturing the vibrant atmosphere of PAW 2025.

This year's edition is particularly significant as it celebrates the tremendous success of PAW 2025, where, as the world's arbitration community gathered in Paris, all eyes were on the city. With over 10,000 participants from 135 countries, 198 academic conferences, and 48 social events, PAW 2025 truly stood out as a global milestone. The 9th edition of PAW saw the participation of 256 partners and a remarkable variety of events, showcasing the ever-growing importance of international arbitration and Paris as a seat of arbitration. There's a reason we call this the '*special edition*' *Biberon* – our coverage this year spans over 25 events, offering insights into the critical topics and developments shaping the future of international arbitration.

We would like to extend our sincere thanks to all the members of the PAW Board for their continued partnership and commitment to our shared mission. Their dedication strengthens the foundation of Paris Baby Arbitration, allowing us to fulfill our core mission of promoting international arbitration and making it more accessible to young practitioners worldwide. We are also grateful to the law firms, associations, and institutions who have placed their trust in us, including the French Court of Cassation, which made its debut at PAW this year. A special thank you goes to our talented reporters whose exceptional work has made this special edition possible.

We hope you enjoy reading this edition of our newsletter, and we encourage you to follow us on LinkedIn to keep up to date with all of our latest news and events.

Paris Baby Arbitration is a Paris-based network of students, graduates, and trainee lawyers dedicated to promoting the practice of international arbitration and making it more accessible.

Each month, our team works diligently to edit and deliver the *Biberon*, a bilingual newsletter published in English and French, which offers insights on the most prominent and recent decisions and arbitral awards rendered in various jurisdictions. Since 2021, thanks to its partnership with Paris Arbitration Week, the association also publishes a special edition dedicated solely to PAW.

We hope that this year's special edition will encourage greater contributions from students and junior lawyers to the arbitration community. Guided by the values of openness and collaboration, Paris Baby Arbitration strives to empower the next generation of lawyers to express and share their passion for international arbitration.

Sincerely yours,

Lea Maalouf
General Editor

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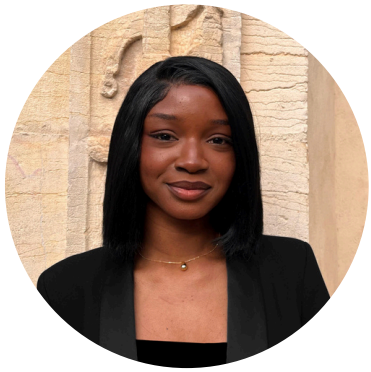

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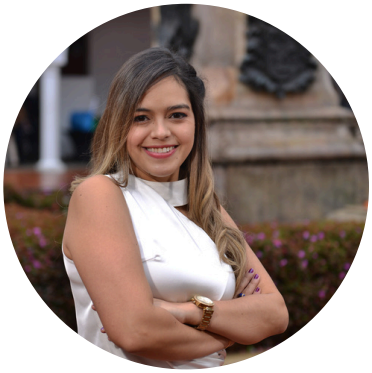

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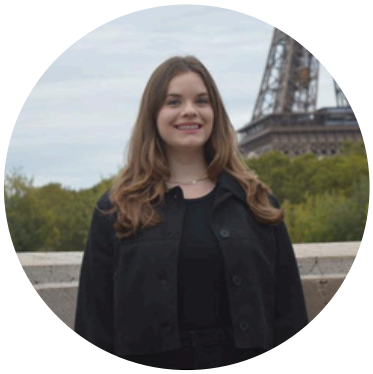

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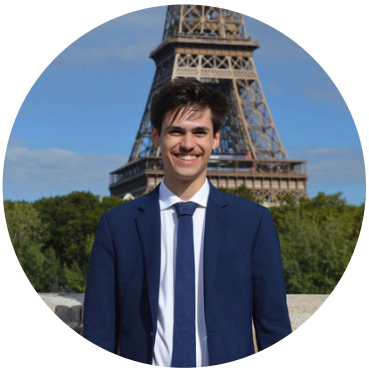

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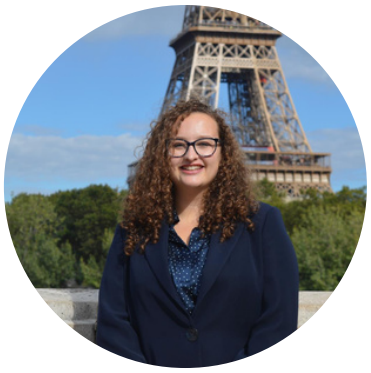

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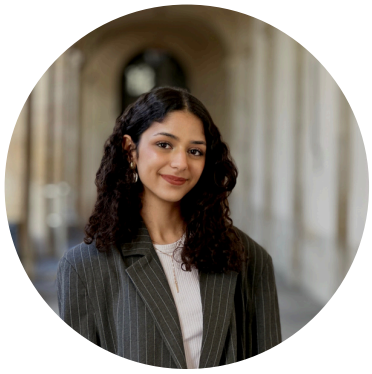

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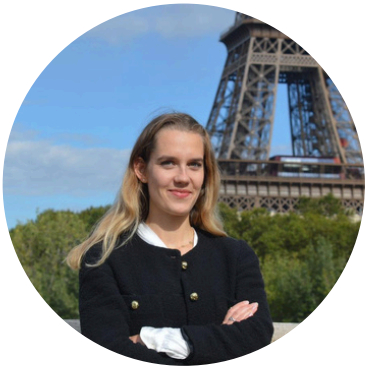

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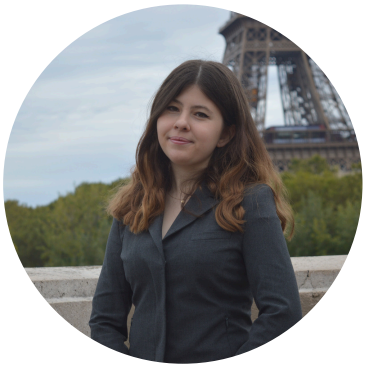

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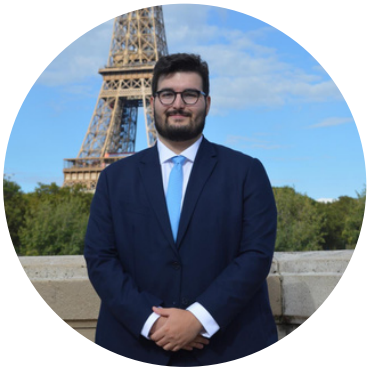

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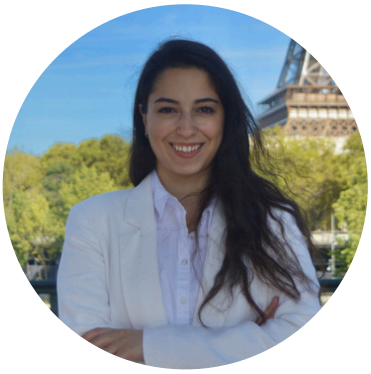

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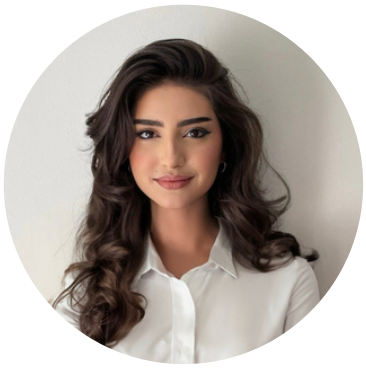

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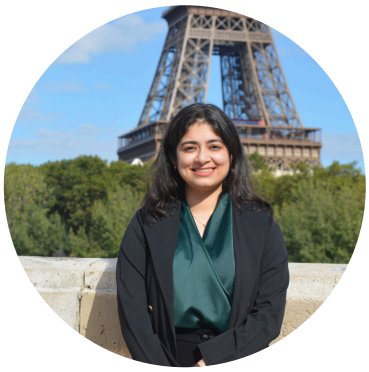

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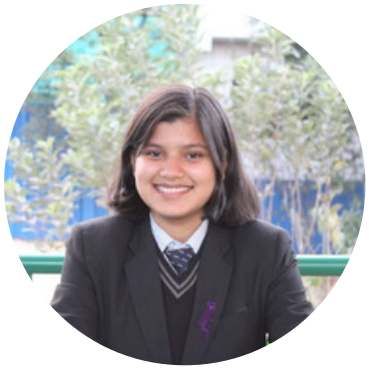

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PAW 2025 KICK-OFF AND KEYNOTE SPEECH

By Lea Maalouf and Samuel Davies

On the bright Monday morning of 7 April 2025, the city of Paris buzzed with anticipation as the 2025 edition of Paris Arbitration Week ("PAW") was inaugurated with the traditional 'Opening Session', held in introduction of the 9th ICC European Conference on International Arbitration. As the city awoke, legal professionals from around the globe eagerly gathered at *Maison de la Chimie* to kick off an extraordinary week celebrating innovation, inclusivity, and the vibrant global arbitration community in the heart of one of the world's most preferred seats of international arbitration proceedings! The keynote speech was delivered by Professor Mohamed Abdel Wahab, a distinguished expert in international arbitration, who shared his insights on diversity in international arbitration, setting the tone for a week rich with thought-provoking discussions and dynamic networking opportunities.

Ms Diamana Diawara and Mr Benjamin Siino, Co-Presidents of the PAW Board, opened the session with a powerful address, setting the stage by highlighting the pressing geopolitical and economic context, upholding the influential role of PAW and its core values in shaping the future of international arbitration. In particular, Ms Diawara stressed the importance of the rule of law and access to justice, which she identified as essential foundations for stable and equitable societies. She also noted that international arbitration serves as a vital, efficient, and neutral mechanism for dispute resolution, ensuring that justice transcends borders. She articulated PAW's three core values: unity, sustainability, and diversity, with the community at the heart of the project. She spotlighted the sustainability event organised by the PAW Board with Mr Laurent Fabius, former French Prime Minister and quoted Ms Yasmin Mohammad, one of the co-founders of PAW, stating, "*we shall continue talking about diversity until it is no longer an issue*".

Prof Abdel Wahab captivated the audience with his keynote speech, entitled "*Silent Voices & Global Inclusion*". He delved into the vibrant tapestry of diversity, touching on aspects such as age, ethno-cultural backgrounds, professional experiences, gender, physical and cognitive diversity, and socio-economic factors. With a keen eye on the future, he distinguished between natural and synthetic persons, highlighting how intersectionality plays an important role in upholding legitimacy, building credibility, establishing trust, enhancing cultural expertise, and improving decision-making. With fervour, Prof Abdel Wahab advocated for an impactful dialogue and a structured discourse that combines both words and tangible actions, calling for active community engagement and support beyond institutions, emphasising that embracing diversity is a powerful catalyst that propels innovation and excellence in international arbitration.

Prof Abdel Wahab showcased the remarkable turnout at this year's PAW, with over 40,000 registrations and addressed the existing disparities among players, stakeholders, and parties in the arbitration community. He pointed out that the American Arbitration Association (AAA) remains predominantly 85% white, calling on the need for fortifying the global community's efforts to enhance cultural and ethnic diversity. He applauded initiatives like the African Promise, which aims to increase the representation of African arbitrators in international arbitration proceedings, and the International Council for Commercial Arbitration (ICCA) mentoring programme, designed to nurture and support emerging talent from diverse backgrounds, providing them with the guidance and opportunities needed to thrive in the field as young arbitration practitioners.

Prof Abdel Wahab addressed the challenges facing arbitration, emphasising that diversity and merit are not diametrically opposed, and one does not discount the other; it is possible to have highly deserving, competent, qualified expertise and skilled practitioners from all walks of life. He raised concerns about the impact of artificial intelligence on decision-making and advocacy, questioning how long it will be before AI replaces human roles. He noted that entry-level juniors are particularly vulnerable, and the younger generation potentially facing a clogged career path. Furthermore, he mentioned that the role of tribunal secretaries is a valuable gateway for individuals from diverse backgrounds to break into the field of arbitration.

Prof Abdel Wahab concluded his speech by envisioning the future of international arbitration, emphasising the importance of scouting talent in rural, regional, and metropolitan communities across the globe, extending beyond arbitral appointments and increasing access to capacity building and training. He highlighted the need for high-quality education that is affordable and accessible, particularly in regions such as Africa, South-East Asia, and Latin America, where financial constraints often hinder access to education despite the available offers from top universities. He questioned whether prohibitive costs are a barrier to diversity and stressed that without the commitment of all actors within the community from State, faculty, business, and others, the efforts of arbitral institutions may be rendered ineffective.

To conclude, he affirmed that cultural and ethnic diversity foster tolerance and coexistence, breaking down barriers and dispelling misconceptions. Quoting Kofi Annan, the former Secretary General of the United Nations, he reminded the audience, "*We may have different religions, different languages, different coloured skin, but we all belong to one human race*". Finally, he vouched for greater structural support from universities, private practice, and arbitral institutions to open doors to a wider range of individuals, warning that if prohibitive costs continue to limit access to arbitration, the promise of a truly inclusive and equitable field will remain unfulfilled.

ACCESS TO JUSTICE: COMMON CONCERNS AND REMEDIES OF WESTERN AND SANCTIONED PARTIES

By Marcos D'Alessandro

The panel titled "*Access to Justice: Common concerns and Remedies of Western and Sanctioned Parties*", held on 7 April 2025 during the Paris Arbitration Week, brought together a diverse group of legal experts, institutional representatives, and arbitration practitioners. The panel was co-hosted by the Istanbul Arbitration Centre ("ISTAC") represented by its Chairman of the Board Professor Akinci and Derains & Gharavi represented by Dr Gharavi, who also moderated the panel. The panel featured Dr Nathalie Lengert, Legal Counsel in Commercial Litigation at Nokia (*for the EMEA & APAC region*), Ms Maria Irene Perrucio Lourie, Head of International Affairs (*for Europe and Americas*) at WeBuild Group, Dr Moshkan Mashkour, Founding Partner at Sanglaj, and Ms Tatyana Neveeva, Managing Partner at Verba Legal. The objective of the session was to discuss and identify systemic barriers created by recent international sanctions while proposing practical ways to preserve fairness and enforceability.

Professor Akinci opened the conference by addressing Turkey's neutral stance in the context of international arbitration ("IA") regarding ongoing conflicts in general. He highlighted that Turkey does not align with the European Union's sanctions and selectively applies those imposed by the United States. Furthermore, Mr Akinci emphasised Turkey's unique position as a stable neighbour to Iran, noting a history of peaceful coexistence rooted in mutual respect and cultural proximity as well as a 400-year history of stable borders.

Turning to ISTAC itself, Professor Akinci described Turkey's arbitration framework as being closely based on the UNCITRAL Model Law. He further assured the audience that both Turkish domestic and international arbitration laws align with international standards, emphasising that Turkish judges are open-minded, a cornerstone reflected in recent higher court decisions that reinforce the reliability of Turkish arbitration practice.

Professor Akinci concluded his segment by promoting Istanbul as an attractive venue for both domestic and IA, highlighting its growing caseload in commercial and investment disputes, particularly in the energy and infrastructure sectors. He also emphasised ISTAC's diverse and reputable international board members, including Dr Gharavi, Professor Hanotiau, and Professor Gary Born, its flexible fee payment mechanisms that accept both cash, Chinese Yuan and soon, cryptocurrencies, as well as Istanbul's strategic geographical position as a nexus between East and West. Additionally, he noted the country's visa-free access and user friendly and extensive flight connections, which offer practical advantages for parties from sanctioned jurisdictions.

Dr Gharavi formally introduced the panel to the audience, explaining that the topic was chosen in response to growing concerns about the erosion of fundamental arbitration principles, including access to justice, due process, and institutional independence. He reflected on how recently imposed sanctions have created a highly complex and adverse environment for both claimants and respondents in IA. Dr Gharavi also emphasised that the panel was selected to achieve a balanced representation of geography, gender, and stakeholder perspectives, starring representatives of sanctioned parties, counsel for Western companies, and institutional voices.

Ms Perrucio Lourie spoke about her experience and vantage point as counsel to Western-backed companies bringing claims in arbitration against sanctioned entities. She outlined the comprehensive obstacles faced in these types of proceedings. She highlighted that problems usually arise from the outset, as registration of the case might not be straightforward given that arbitral institutions have stringent compliance checks which can hinder the process for weeks. These delays, she underlined, can many times affect the strategic interest of claimants, who often seek a swift resolution, including so as not to have to wait in line for enforcement.

Perhaps the most complicated aspect of sanctions, Ms Perrucio Lourie observed, relates to payments. She explained that respondents often cannot pay their share of tribunal fee advances, resulting in requests for claimants to cover all costs. Ms Perrucio Lourie argued that this undermines the core principle of cost sharing and may deter claimants from pursuing valid claims and rewards the sanctioned party. Notwithstanding, she acknowledged that some workarounds to this issue do exist, such as parties entering contracts directly with the tribunal for fee arrangements, thereby bypassing the institution to avoid blocked transactions.

Finally, Ms Perrucio Lourie addressed the challenges associated with tribunal appointments, noting that sanctioned states often face difficulties in nominating arbitrators, counsels and experts. This issue frequently escalates to the fundamental problem in IA, the enforceability of awards. She concluded her section by urging institutions and the IA community to develop more efficient protocols for handling sanctions-related cases and to explore solutions such as escrow accounts or flexible cost advancement arrangements.

It was then Dr Lengert's turn to speak about her experience as part of Nokia's Russian-exit task force in 2022. She largely concurred with Ms Perrucio's observations regarding how sanctions create imbalances in arbitration proceedings. Dr Lengert highlighted the significant challenges in accessing qualified international counsel, often due to legal or financial restrictions in sanctioned countries, as well as the stigma associated with participating in such cases. She cited examples such as blocked payments, frozen accounts, and failed attempts to pay in cash or through intermediaries.

Dr Lengert represented that respondents too would like to have arbitration processes so as to have the claims promptly disposed of and avoid having to defend before local courts of counterparties if the arbitration clause is ruled to be ineffective. She also highlighted the challenges in accessing information about employees and documents needed to defend claims after Western companies exit a sanctioned country. She noted that the closure of local offices often results in the loss of "*institutional memory*". Additionally, Dr Lengert accentuated the reputational risks companies face when engaging in any form of negotiation with a sanctioned party, as the media may misrepresent legitimate defences as conducting business. Finally, she argued that both settlements and enforcement of awards carry significant risks. Even if Western respondents succeed, they often encounter challenges in enforcing costs or recovering awards from sanctioned claimants due to frozen or untraceable assets.

Dr Mashkour then addressed the venue, presenting his arguments from the perspective of an Iranian practitioner. He began by categorising sanctions into three types: unilateral (e.g., those imposed by the U.S.), multilateral (e.g., those from the EU), and universal (e.g., those backed by the UN Security Council). He further emphasised that sanctions can also vary by subject, such as sectoral, individual, or financial, and by scope, distinguishing between primary and secondary sanctions. Dr Mashkour focused particularly on secondary sanctions, such as the US' extraterritorial measures, which impose significant compliance burdens even on non-US partners and create a chilling effect. He pointed out the risk that national courts exercise jurisdiction if the arbitration clauses are not promptly processed and/or if the arbitral institutions decided without the consent of the parties to communicate case information to sanctioned authorities. To address these issues, he proposed the development of a uniform exemption regime for arbitration, ensuring that proceedings are insulated from the reach of sanctions laws.

To close out the event, Ms Neveeva, speaking as a Russian practitioner, shared her first-hand experience of how arbitration is often hindered by technical and legal obstacles. She explained that in certain ICC cases, Russian parties were unable to transfer funds for fees due to blanket rejections by European banks. Even when general licenses were theoretically available, banks refused to process payments out of fear of compliance repercussions. Ms Neveeva highlighted how Russian parties were forced to resort to physically carrying cash or relying on third-party intermediaries to make payments on their behalf. She recounted a specific case in which an attorney had to travel to Montenegro to deposit fees from his personal account. She mentioned that there were no direct flights from Moscow and that she had to travel via Istanbul.

The symposium concluded with reflections and a warning about the urgent need for coordinated exemptions and clarifications as both claimants and respondents, from the West and sanctioned States, had common interests in having arbitrations promptly processed and an even playing field restored. Without these measures, the rule of law and confidence in arbitration risk being undermined by a patchwork of inconsistent overcompliance within the arbitration community. In the meantime, ISTAC declares its ability and capability to allow prompt, fair and effective access to justice for parties subject to sanctions.

ENERGY TRANSITION IN AFRICA: ARBITRATION AT THE CROSSROADS OF SUSTAINABILITY AND DEVELOPMENT

By Louise Nicot

On 7 April 2025, Reed Smith and AfricArb hosted a conference in Paris on arbitration and Africa's energy transition, addressing the intersection of sustainability and development. The event was moderated by Mr Clément Fouchard (*Partner at Reed Smith*).

Setting the tone, Mr Fouchard opened with a reminder of the complexities at play: Africa's path to sustainability lies at a crossroads, as the continent must navigate between global decarbonization imperatives and urgent development needs. With a growing population and vast renewable potential, the stakes are high, but so is the promise. Quoting the Malaysian Prime Minister, Anwar Ibrahim, he emphasised that the need for transition must be balanced with "*the need to survive*" and the imperative to eliminate poverty and provide essential services.

The keynote address was delivered by the Hon. Thabo Chakaka-Nyirenda (*Attorney General of Malawi*). His message was clear and powerful: for Africa, the energy transition is a moral and social imperative. It is not merely about compliance with international frameworks, but about equity, survival, and dignity. Access to reliable energy means powering schools and hospitals, lifting millions out of poverty, and catalyzing inclusive growth. He called for a legal system capable of supporting this transition, one that does not allow arbitration to become a barrier. Arbitration must evolve, he said, by embedding sustainability principles into its processes, ensuring African voices are represented, and promoting treaties that reflect the challenges of climate change. With over 600 million Africans lacking electricity, energy cannot be treated as a commodity alone: it is about justice, investment, and community empowerment. In Malawi, efforts to create bankable green energy projects are coupled with institutional reforms to enhance the credibility of dispute resolution systems. As he concluded, he urged the legal community to act as guardians of both justice and sustainability at this critical juncture.

The panel explored practical and structural challenges faced by African countries in mobilizing financing for energy transition projects. Ms Sabine Cornieti (*Senior Energy Specialist at the World Bank*), underscored the importance of ownership, reliability, and trust in energy infrastructure. Governments must be fully committed for the long haul, she argued, as frequent political changes undermine long-term project viability. She noted that the energy grid remains a core issue: without a strong and reliable grid, renewable projects cannot scale efficiently. Another hurdle lies in the financial viability of energy off-takers, particularly in markets like Namibia or Uganda. Foreign exchange risks also complicate project bankability. According to her, the key to successful transition lies in ensuring legal capacity within governments, particularly with access to specialised in-house counsel to design and structure robust contracts. Ms Cornieti highlighted Tunisia's early solar struggles due to weak legal and financial frameworks, later improved with multilateral support. She emphasised the World Bank's role in high-risk countries through subsidies, guarantees, and concessional finance, enabling projects even amid political instability, like in Burkina Faso. There, solar initiatives have lowered electricity costs despite coups. For lasting impact, she stressed the need for capacity-building, long-term commitment, and regional cooperation.

On contractual models, Mr Gregory Travaini (*Head of Legal Transversal Team at ENGIE*), described the shift from traditional Power Purchase Agreements to increasingly sophisticated hybrid contracts that combine multiple elements, such as gas supply agreements, blockchain-based tracking of origin, and energy efficiency certificates. According to him, today's focus is on optimising flexibility and maximising decarbonisation benefits. Innovative models such as biomethane and integrated energy systems are gaining ground, especially where they can operate autonomously and reduce dependency on volatile grids. He highlighted smart financing strategies involving joint ventures between industrial and financial partners, for instance, recent partnerships in low-carbon hydrogen production between Air Liquide, Total, and AXA-backed funds. These models, he said, are key to sharing risk while fostering innovation. Gregory Travaini outlined ethical and regulatory challenges in African energy projects. He stressed the need to address human rights, land use, and environmental concerns from the outset, despite growing legal complexity. On the regulatory side, he pointed to unpredictability (customs, pricing, termination) as a major barrier, urging clearer, more flexible frameworks to support long-term goals and reduce investor risk.

The discussion then shifted to gas-to-power initiatives, with Ms Habibatou Toure (*Arbitrator counsel at HTSConsulting*) sharing her experience in Senegal and the surrounding region. Senegal has moved from dependence on imported fuels to energy diversification, particularly solar. Senegal's energy transformation was accelerated by the "*Scaling Solar*" program, which succeeded not merely due to external funding, but because of competent structuring, balanced contract design, and strong local legal support. She emphasised that gas-to-power is gaining momentum, particularly with Senegal's recent discoveries, but warned against premature reliance on gas without adequate infrastructure. She argued that public-private energy contracts must be drafted with foresight and balance to prevent future disputes. Arbitration, she said, must not be weaponized against under-resourced states; it should instead promote fairness and long-term stability. As for regional integration, Ms Toure pointed to the West African Power Pool and ongoing efforts by ECOWAS to implement a harmonized regulatory framework. This evolution, she said, is encouraging and essential to ensuring both legal security and economic efficiency across borders.

Ms Sarah Ross (*General Counsel at United Mining*) offered a mining sector perspective on how mining companies are navigating the energy transition. The sector faces soaring capital expenditures and complex risk profiles, she noted, especially as mines seek to generate or procure renewable energy. A recent USD 450 million project in Zambia, she noted, represents a doubling of earlier investment levels. These challenges demand adaptive regulatory environments and closer collaboration with governments. Mining companies will also need to engage in benefit-sharing with local communities, ensuring that the energy transition is not only profitable but socially inclusive. She further argued that the mining sector is essential to the energy transition itself, given Africa's vast untapped reserves of critical minerals. These materials are central to technologies like batteries, solar panels, and wind turbines. However, she warned that responsible sourcing and environmental stewardship must be priorities, not afterthoughts. The sector, she concluded, can be both a contributor to and a beneficiary of Africa's green transformation, but only if it commits to equity, transparency, and sustainable practices.

The closing remarks were delivered by Ms Juliya Arbisman (*Partner at Reed Smith*) and co-host of the event. She delivered a powerful synthesis of the day's insights and emphasised the urgent need for arbitration frameworks to evolve in alignment with climate realities and Africa's development goals. Arbitration, she stressed, must be more than a neutral process: it must serve a constructive purpose in global sustainability. "*We cannot treat arbitration as an isolated legal tool*", she noted. "*It must align with the global sustainability agenda, particularly in regions where energy access is still a matter of survival.*" She called for stronger local capacity, more African arbitrators, and arbitration decisions that reflect on-the-ground realities. She urged legal professionals to help shape fairer, more sustainable investment treaties, envisioning a collaborative and transformative future for arbitration.

TOWARDS A NEW FRENCH ARBITRATION LAW: PRESENTATION AND DEBATES ON THE LAW REFORM PROJECT

By Louise Nicot

On 8 April 2025, as part of Paris Arbitration Week, a symposium entitled "*Towards a new French arbitration law: presentation and debates on the law reform project*", organised by *Sorbonne Arbitrage* with l'*Association française d'arbitrage* ("AFA") and "*Paris, Place d'Arbitrage*" took place. The symposium provided an opportunity to present in detail the proposal to reform French arbitration law. Academics, lawyers, and institutional representatives shared their interpretation of the project and the issues it raises, both in terms of clarity and competitiveness of the French system.

In his opening address, Attorney General Gérald Darmanin stated that reforming arbitration means committing to a modern law that guarantees stability and attractiveness. He described a reform as an architecture in three acts: consensual regulatory measures to be implemented from autumn 2025, a cycle of consultations planned until summer 2026, then, in autumn 2026, the creation of an arbitration code intended to enshrine the unity and legibility of French law. This codification, designed as a tool of influence in the global legal competition, embodies, in his opinion, a discrete but resolute legal diplomacy. He praised the mobilisation of the Parisian ecosystem and emphasised the collective dimension of the project: "*This reform will only succeed with you, and never against you.*"

Ms Carine Dupeyron (*President of "Paris, Place d'Arbitrage"*) proposed a three-pronged approach: to complete the autonomy of arbitration, to innovate to maintain a high level of excellence, and to clarify by making case law more readable. She emphasised the need to move beyond dualism in favour of a coherent monist law. The inspiration of Emmanuel Gaillard, a pioneering figure in the field of modern arbitration thinking, was also recalled.

Mr Marc Henry (*President of the AFA*) welcomed a reform driven by a "*bottle-fed on arbitration*" generation, which practises it daily and is therefore legitimate in proposing a new framework. He countered concerns about haste with the diligence necessary for any ambitious reform. He emphasised that the consensus is founded on three key pillars: clarity, readability, and attractiveness.

Ms Diamana Diawara and Mr Benjamin Siino (*Co-Presidents of Paris Arbitration Week*) emphasised the success of the 2025 edition, which demonstrates Paris' international influence. Mr Siino noted that the 2011 reform had successfully combined tradition and modernity, and that the same balance should guide this new overhaul. He emphasised that the success of any reform depends on a unifying debate and a sincere search for consensus.

The core of the project was then presented by the co-chairs of the working group, Mr François Ancel (*Counsellor at the Court of Cassation*) and Mr Thomas Clay (*Professor at the University of Paris 1 Panthéon-Sorbonne*).

Mr Ancel recalled that the initiative came from the minister, in an international context where Singapore, the United Kingdom, and Switzerland are modernising their law. The working group, comprising fifteen specialists from academic, legal, and professional backgrounds, met seven times to address the arbitration body, legal proceedings, the monitoring of awards and the structure of arbitration law. While he expressed regret at the absence of a broader public consultation, he emphasised that this conference was part of a commitment to openness.

Mr Clay outlined the project's structure, which is to be executed in two stages: the foundations and the finishing touches. Among the foundations, he highlighted an arbitration code structured by 146 articles, divided into four books, and preceded by a set of guiding principles. He emphasised the necessity of consolidating rules that are currently dispersed across 23 distinct codes. He then went on to defend the idea of absorbing domestic arbitration by international arbitration, emphasising the growing porosity of the distinguishing criteria between the two. The project also aims to extend arbitrability, establish an autonomous regime of action for annulment, and to introduce the unenforceability of certain decisions against third parties. As for finishing touches, they aim to make the law more effective (facilitating access to justice, provisional enforcement nationally, regularisation of sentences), simpler (abolishing appeals in domestic arbitration, concentration before specialised courts), fairer (intervention of the supporting judge in cases of effective impecuniosity), more modern (taking account of digital technology, principle of proportionality), and more precise (reaffirmation of the principle of confidentiality, clarification of contractual relations).

Regarding codification, Ms Chiann Bao (*Arbitrator at ArbBoutique*) stressed the importance of a user-friendly structure and praised the efforts of the working group to achieve this objective.

Mr Daniel Mainguy (*Professor at the University of Paris-Panthéon-Sorbonne*) explained that the current fragmentation of texts is detrimental to the coherence of French law. According to him, the future code will restore a clear identity to arbitration, consisting of 146 articles divided into four books dealing respectively with the general principles of arbitration, the recognition and annulment of awards, certain specific arbitrations and administrative and group-related issues.

Ms Anne-Véronique Schlaepfer (*Partner, White & Case in Geneva*) praised the innovative scope of the codification project but called for vigilance in its implementation. She highlighted the issues of maintaining flexibility, unifying the rules, controlled innovation, and adaptation to practice. She hoped that this ambitious reform would be a source of inspiration, provided that it is rigorously thought through.

Mr Salim Moollan (*Barrister, Brick Court Chambers*) underlined the ambition of this reform, stressing the need to preserve the efficiency of arbitration while strengthening the rule of law.

Mr Denis Mouralis (*Professor at the University of Aix-Marseille*) pointed out that the original idea was to merge domestic and international arbitration completely, but this option was rejected in favour of a common regime, with a few exceptions for domestic arbitration. International arbitration is being redefined around the notion of "*economic*" transactions, and the distinction between annulment procedures is now based on where the award is rendered, not on the nature of the arbitration.

Ms Emilie Gonin (*Barrister, Brick Court Chambers*) compared the French and English arbitration reforms, highlighting the transparent but less flexible nature of the English model. She welcomed the removal of the distinction between domestic and international arbitration and the absence of a strict definition of domestic arbitration in France. Although the French group was inspired by the English model, she stressed that some proposals went further in terms of liberalism.

With regard to the guiding principles, Mr Jérémy Jourdan-Marques (*Professor at the Université Lumière Lyon 2*) divided them into four categories, including principles affecting arbitration law, such as good faith and confidentiality; fundamental values, such as the independence and equality of the parties; principles central to the functioning of arbitration, such as the choice of applicable rules; and principles specific to French law, such as the prohibition on circumventing arbitration through national law and the competence-competence principle. He emphasised that these principles do not open new avenues for annulment.

Ms Cécile Chainais (*Professor at the University Paris-Panthéon-Assas*) welcomed the creation of an autonomous body of guiding principles. She noted the integration of modern principles such as procedural proportionality and the inclusion of human and environmental rights. She suggested two approaches: a more restrictive conception of the Guiding Principles, focusing on arbitration, and the idea of a common corpus of principles applicable to civil justice as a whole, including arbitration.

With regard to the contractual relations between the arbitral actors, Mr Laurent Aynès (*Professor Emeritus at the University of Paris 1 Panthéon-Sorbonne*) recalled that the relations between arbitrators, parties and institutions are contractual relations, which the future code proposes to qualify as such. This qualification makes it possible to address the issues of arbitrators' liability and remuneration. He rejected criticism that the relationship between the arbitrator and the parties should be seen as a procedural link, arguing instead that acceptance of the arbitrator's appointment completes the process of the arbitration agreement.

Ms Claire Debourg (*Professor at the University of Paris-Nanterre*) presented the draft articles on arbitration in sensitive areas: in consumer law, the arbitration clause becomes unenforceable once the dispute has arisen; in labour law, the same is true, to prevent arbitration from being imposed due to the relationship of subordination; in family law, arbitration is extended to certain inheritance-related issues. She recommended greater caution and in-depth reflection in these areas and noted that the international approach to arbitration involving public entities requires dialogue with the administrative courts.

Mr Jean-Yves Garaud (*Partner at Cleary Gottlieb*) stressed the importance of training for supporting judges, particularly for internal arbitration. He supported the proposal to abolish the residual jurisdiction of the Commercial Court and to make the Paris High Court the sole supporting judge in international matters. In particular, he proposed the designation of several specialised courts in France for domestic matters. He also emphasised the role of Article 33 of the draft law, which allows the supporting judge to prevent a denial of justice in the event of impecuniosity.

Mr Alexis Mourre (*Partner at MCL Arbitration*) welcomed the innovation of allowing the judge to grant exequatur to the arbitrator's interim measures, while expressing reservations about the possibility of appealing against the exequatur order. He criticised Article 33 of the draft as vague and imprecise, which could lead to conflicts of jurisdiction and undesirable judicial interference.

Mr Eric Loquin (*Professor Emeritus at the University of Burgundy Europe*) presented the innovations relating to annulments. He welcomed the abolition of the suspensive effect of the action for annulment in domestic matters, the possibility of referring to the arbitral tribunal to regularise the award and the importance of the proposal to strengthen the concentration of means and procedural fairness. However, he criticised the removal of Article 1492(6) of the Code of Civil Procedure on the formal grounds for annulment, considering that an unsigned award should not be considered valid.

Ms Claire Pauly (*Partner, Jones Day*) expressed reservations about the lack of an appeal in domestic arbitrations and the removal of the waiver of the right to set aside in international arbitrations and welcomed the abandonment of the *Schooner* case law. She highlighted the draft's clarification of third-party opposition of an award and supported the introduction of a stay of proceedings. She also suggested improvements suggested by some practitioners, such as a special chamber for arbitration and clarifications on the written nature of the arbitration agreement.

Mr Daniel Barlow (*President of the International Commercial Chamber of the Paris Court of Appeal*) highlighted five areas for reform of the future code: strengthening the autonomy of the procedure for greater clarity, promoting specialisation by allocating specific jurisdictions and trained judges, improving predictability through strict deadlines and fines for exceeding them, increasing efficiency by optimising the management of discovery and allowing the award to be regularised and, finally, ensuring proportionality for a procedure better adapted to the specificities of arbitration.

Mr Jacques Pellerin (*Partner at PMG Avocats*) stressed the need to separate the arbitration from the appeal procedure to avoid the influence of the annulment action. He expressed concerns about confidentiality, including leakage of data and lawyers' access to the conclusions. Finally, he mentioned the need to clarify the annulment procedures, in particular with regard to the remittal of awards to the arbitrators.

In closing, Mr Louis Degos (*President-elect of the Paris Bar*) welcomed the progress of the reform but regretted the absence of the voice of litigants in discussions. He recalled the three stages ahead: a first set of consensual measures in autumn 2025, a second to address sensitive issues by summer 2026, and a third to present the final version of the code in autumn 2026.

The interventions from the audience showed a keen interest in the concrete consequences of the reform. A domestic arbitration practitioner expressed concern about a possible weakening of this branch, to which it was replied that the project aims to ensure equivalent flexibility for both regimes. A question on the different bases of articles 1492 and 1520 of the Code of civil procedure led to a debate on the advisability of unifying the provisions, with the assurance that the jurisprudence and the tools for processing decisions will make it possible to preserve the preciseness of the controls. The role of the supporting judge was also debated, in particular its extension in the case of impecuniosity. While some saw this as a step forward in guaranteeing access to justice, others warned against the vagueness of the concept and the risks of interference. In response to these questions, the speakers reiterated the desire to strike a balance: to maintain certain differences while unifying the essentials.

COMPENSATION OF ENVIRONMENTAL DAMAGES

By Marie Gauthier

On Tuesday 8 April 2025, as part of the 2025 edition of Paris Arbitration Week, Jones Day hosted a conference titled "*Compensation of environmental damages*". The panel was organised by Ms Claire Pauly (*Partner at Jones Day*) and moderated by Mr Mikaël Schinazi (*Senior Associate at Jones Day*) and included (by alphabetical order) Professor Olivier Caprasse (*Arbitrator and Founder of Caprasse Arbitration*), Judge Philip Jeyaretnam (*President of the Singapore International Commercial Court*), Ms Camille Rollin (*Senior Associate at Jones Day*), Ms Armelle Sandrin-Deforge (*Partner at Jones Day*), Ms Tania Tholot (*Senior Associate at Brattle Group*), and Dr Herfried Wöss (*Arbitrator and Founder of Wöss & Partners*).

Ms Pauly introduced the conference by presenting Jones Day and its activities. Ms Pauly also commented on the recent draft reform of French arbitration law, presented to Mr Gérald Darmanin, the French Minister of Justice, by a working group of experts. She indicated that one provision in particular was contentious among the arbitration community: the obligation on arbitral tribunals sitting in France to take into account human rights, environmental and compliance issues, which some argue could undermine the attractiveness of French arbitration. In light of these differences, it was decided by the working group not to include such provision in the draft arbitration code.

Ms Pauly then gave the floor to Mr Schinazi to introduce the topic of the conference. Mr Schinazi explained that in today's world, environmental harm is inevitable to some extent. However, its growth demands an urgent legal framework. He pointed out some challenges associated with compensation of environmental harm: the question of the appropriate forum for such claims, the various methods of assessing damages (highlighted in the 2018 seminal case *Costa Rica v. Nicaragua* where the International Court of Justice awarded compensation for environmental damage for the first time), and the inability of compensation to restore ecosystems.

Dr Wöss set the stage by discussing various key leading cases and instruments. Arbitral tribunals mainly hear environmental damage claims arising from contractual arbitration clauses, or in the form of counterclaims in international investment disputes (as demonstrated in the leading case *Burlington v. Ecuador*). Additionally, jurisdiction for extra-contractual claims is governed by tort law (violation of the duty of care) and the 2024 European Union ("EU") Corporate Sustainability Due Diligence Directive ("CSDDD") at the European level, which sets the conditions to be met in order for companies to be held liable for environmental damage (damage to a natural or a legal person's interests protected under national law, breach of duty of care, causal link and fault). The CSDDD also provides for a right to full compensation (art. 29), meaning, according to Dr Wöss, the loss of repair (remediation of adverse impacts) rather than the losses actually endured. The legal framework is completed by the 2004 EU Environmental Liability Directive ("ELD") which sets the civil liability regime for environmental damage based on the "*polluter pays*" principle, provided that the damage is measurable and has caused significant adverse effects.

Judge Jeyaretnam shared his thoughts on the difficulty to prove causation in environmental damage claims. Given the multifactorial causes of environmental harm (multiplicity of actors and interactions), the traditional theories (the "*but-for*" test) are inadequate to attribute liability on the person responsible for the harm. However, "*climate attribution signs*" used in human health cases can be helpful tools. Another challenge for proof of causation is that damage may also occur naturally. In that case, the relevant test will be whether the defendant's actions materially contributed to the harm and the principle of proportionate recovery will apply. These challenges highlight the limitations of litigation, which could be solved through the political process.

Moving to a series of local contexts or specific subject areas, Ms Sandrin-Deforge presented the environmental damage regime under French law. She explained that the roots of this regime go back to the Napoleon Code, where the "*polluter pays*" principle was already codified. However, it only covered damage to persons or goods. The EU ELD created a civil liability regime specifically tackling damage to the environment, which is twofold: damage on species (flora, fauna) and damage on natural habitat (water, land, etc). The ELD set two fundamental principles: any person responsible for environmental damage must remedy it, and that remedy must be in-kind.

Prof Caprasse shared his view on environmental damage in the context of M&A disputes. As regards private transactions, the legal status of the seller is often a key consideration by arbitrators. Furthermore, the burden of proof and applicable law are important in practice. Indeed, under some laws, once the plaintiff has established environmental damage, even if they are unable to assess its extent, the tribunal will have to grant indemnification. Therefore, M&A provisions will often include caps on environmental damages, the level of which depends on the bargaining power of each party to the transaction.

Ms Rollin then gave an overview of the French criminal law on environmental damage. To obtain compensation, plaintiffs can go down the traditional path, that is to say, bring a claim before a public prosecutor or join existing proceedings by becoming a civil party (*partie civile*). Also available is the underestimated environmental interim relief (*référé pénal environnemental*) whereby plaintiffs can obtain an injunction against the polluter to cease the damage or limit its effects. Lastly, the public interest judicial agreement (*convention judiciaire d'intérêt public, or CJIP*) has been extended to environmental law in 2020. If the claim is successful, courts have the power to order injunctions to repair or restore the polluted site, to grant reparation of the pure ecological damage suffered by non-governmental organisations, or to compensate the "material" damage, physical injuries, or anxiety suffered by individuals.

Last but not least, Ms Tholot shared her experience as a finance expert often hired to assess harm, in particular in Investor-State disputes. She underlined the challenges around the scope of damages that can be claimed, as well as the ways to take into account the potential environmental damage in the valuation of an investment. Businesses should either take out insurance or put enough funds aside to be able to bear such risks.

Mr Schinazi then invited the panel to reflect on a few questions, starting with the ways in which arbitration mechanisms may be optimized to handle climate change-related disputes effectively. On the topic of tribunal-appointed experts (as compared with party-appointed experts), Prof Caprasse took the view that while parties are best placed to appoint experts as they know their case best, experts from both sides can sometimes have a difficult time working together, making the case for tribunal-appointed experts.

When asked about how technical and scientific expertise could be even more integrated into arbitral and judicial proceedings, Ms Sandrin-Deforge underlined the experts' key role in explaining the damage suffered by the parties, while stressing that ultimately only legal issues matter for the adjudication process. Judge Jeyaretnam emphasised the ideal of the best possible informed adjudicator to rule a given case. In the judicial process, that means also giving judges access to non-legal education (general technical principles, use of statistics in proof, etc.), as well as fostering a strong and active case management and taking time off court to gain general knowledge from experts about their field(s) of expertise.

The panel then explored concrete examples – including the *Antin v. Spain* case, where the EU Commission recently determined that an award requiring Spain to pay EUR 101 million plus interest constitutes unlawful and incompatible state aid under EU rules, or the *Rockhopper v. Italy* case, which has been cited by States and members of the European Parliament as an example of a misguided application of the "*Discounted Cash Flow*" (DCF) method that could result in regulatory chill – and also took several questions from the audience.

FAST & FURIOUS Q&A - DOES ARBITRATION NEED TO BE FIXED?

By Sanjana Sachdev

On Wednesday, 8 March 2025, Freshfields LLP hosted a fast paced Q&A Session titled "*Fast & Furious Q&A - Does arbitration need to be fixed?*", moderated by Ms Alexandra Van der Meulen (*Partner, Freshfields LLP*) and Mr Matei Purice (*Counsel, Head of Global Projects Disputes - Continental Europe, Freshfields LLP*). The event structure followed a fast-paced, question-and-answer format, sparking candid insights from a panel of distinguished practitioners including Ms Olga Mouraviova (*Senior Legal Counsel, Engie*), Mr Pedro Arcoverde (*Senior Legal Counsel, Airbus*), Mr Alexis Mourre (*Partner, MCL Arbitration*), Mr David-Alexandre Krief (*Contract Management Director France, Alstom*), and Ms Rosanna Grosso (*Senior Legal Counsel, Siemens AG*).

The session commenced with an acknowledgment of arbitration users' concern that arbitration in recent years is increasingly protracted, procedurally complex, and costly. Yet, it is noted that despite these challenges, arbitration still remains the preferred mode of dispute resolution, precisely because of its flexibility and the fact that it is designed and controlled by the parties themselves. This indicates that the problems are fixable, not fundamental.

This background information posed a broader question: "*Whether arbitration truly needs to be fixed, and if so, how?*"

To this end, some panel members pushed back against the assumption that "*Arbitration is broken and needs fixing*" and emphasised that the system has been working well and merely suffers from some inefficiencies. One example is the question of time and costs in the arbitral process. Based on experience, the panel discussed the importance of encouraging greater openness in arbitrator disclosures, including the time commitment required of the case and their existing caseload. As to the question of the extent to which an arbitrator is required to disclose, the speakers addressed the obligation of the party to conduct appropriate due-diligence which may at times raise difficulties, considering the information publicised.

Moving to transparency, the panel emphasised the increasing demand for transparency in publishing awards and procedural decisions. It highlighted however that this demand is counterbalanced by the fact that confidentiality remains one of the major reasons why parties choose arbitration.

The discussion then shifted to party behaviour and procedural dynamics. Regarding this, the panel emphasised the adage "*One size does not fit all*" and pointed out that each arbitration operates in a unique way. A wide range of procedural issues were addressed, including document production, bifurcation, procedural fairness and the role of the tribunal in the arbitral process. Further, how should the tribunal deal with procedural indiscipline and party misconduct? The panellists suggested various solutions to this, such as tribunals' use of cost allocation (early on) as a tool to deter procedural misconduct and lists of issues early on in proceedings in collaboration with the parties.

Another issue that was raised was that of privilege and the rules applicable to it during the document production phase. The panellists emphasised that the need for clear rules to be discussed (and agreed) early on in the process and then applied appropriately.

Regarding post-hearing briefs, opinions were divided. Some saw the benefit of post-hearing submissions to address unresolved issues, while others favoured oral closing submissions and the need to resolve all outstanding tribunal questions at the hearing itself.

Comparing arbitration to domestic litigation and other ADR mechanisms was the focus of the last part of the session. The panellists noted that some national courts are growing more effective in resolving cases. The audience was also reminded that courts and arbitral tribunals serve different functions and should not be directly compared. There was also consensus that alternative procedures, like mediation, were gaining traction, particularly because of their cost and response times. It was emphasised that although mediation is becoming more and more common, success depends on having the proper attitude and support.

After the discussion, the audience asked insightful questions on arbitrator availability, due process, and institutional role. The panel highlighted that parties, counsel, arbitrators, and institutions may play a role in addressing the various issues raised by the panel.

The ultimate conclusion was straightforward: arbitration does not require a "*fix*" since it is not broken, but it must continue to move forward. Three key goals remain: efficiency, transparency, and quality. To achieve these goals, collaboration and accountability from all process participants are required.

WAR-BITRATION: IS ARBITRATION THE RIGHT FORUM FOR SETTLING DISPUTES RELATED TO CONFLICTS, SANCTIONS, GEOPOLITICS, TRADE WARS AND WEAPON TRADE?

By Vaïtéa Baillif and Kubra Bayramova

On Tuesday, 8 April 2025, as part of the 2025 edition of Paris Arbitration Week, Omni Bridgeway, Panterra, and Bird & Bird hosted a seminar entitled "*WAR-BITRATION: Is arbitration the right forum for settling disputes related to conflicts, sanctions, geopolitics, trade wars, and weapon trade?*". The panel, which was moderated by Jalal (Jil) El Ahdab (*Partner at Bird & Bird AARPI*), included Leon Ioannou (*Investment Manager, Senior Legal Counsel at Omni Bridgeway*), Jean Le Grix de la Salle (*Director at Panterra*), Karl Hennessee (*Senior Vice-President Litigation and Investigations at Airbus*), Kamalia Mehtiyeva (*Professor of Law at the University of Paris-Est Créteil, Arbitrator and Counsel*), Michel Duclos (*Former Ambassador, Special Advisor and Resident Senior Fellow - Geopolitics and Diplomacy at Institut Montaigne*), and David Gecht (*VP Legal & Contracts, Chief Compliance Officer Defence Mission Systems at Thales*).

Dr El Ahdab opened the conference by underscoring the enduring relevance of arbitration in resolving disputes arising from armed conflicts, drawing attention to historical treaties such as the Treaty of Westphalia, the Jay Treaty, and the Alabama Claims. Dr El Ahdab subsequently outlined the structure of the conference, which would revolve around four key themes: the geopolitical tensions and trade sanctions preceding the conflict, the role of the weaponry industry, the legal dimensions of war, including issues such as *force majeure* and expropriation, and finally, the impact of armed conflict on the conduct and progression of arbitral proceedings.

Mr Duclos, a former diplomat, then took the floor to note a resurgence of isolationism on the part of the United States. He further advocated for closer collaboration between arbitration practitioners and diplomats, while underscoring the importance of recognizing that diplomats ultimately serve the interests of the governments they represent.

Moving forward, Prof Mehtiyeva stressed that the absence of a universally accepted definition of sanctions significantly complicates the task of addressing them within the framework of arbitration, especially as the legal regime applicable is different between UN sanctions, regional and national sanctions. She cited as an example the European sanctions against Russia, notably the "*14th package of sanctions*" adopted in June 2024. She explained that Russia had recently enacted a law allowing the transfer of international disputes involving individuals or companies affected by economic sanctions to its domestic courts, despite a valid arbitration clause. This measure could have concerning implications for the international arbitration community.

Mr Ioannou added that sanctions introduce an additional layer of instability within the context of arbitration. To illustrate this, he referred to a case in which sanctions were temporarily lifted, thereby allowing for the financing and initiation of arbitral proceedings during that limited window of opportunity.

Moving forward, Mr Hennessee noted that many arbitrators exhibit significant reluctance - "*terrified to the point of petrification*" - when it comes to addressing allegations of corruption directly. He observed that parties frequently opt for arbitration venues in Switzerland or the UK to sidestep the intense scrutiny applied by French courts when dealing with corruption-related issues. He even recalled that certain nationalities - such as German arbitrators - may be exposed to criminal liability if they are found to have facilitated corrupt conduct through an arbitral award.

With regard to the weaponry industry, the speakers emphasised the need to appoint arbitrators who not only hold the necessary security clearance to access classified documents but also possess a deep understanding of geopolitical dynamics. Mr Gecht recommended staying cautious in drafting contracts, especially taxation clauses, and recommended opting for three-member tribunals rather than sole arbitrator proceedings in such complex and sensitive cases.

Prof Mehtiyeva emphasised the substantial role that war can play in arbitration, noting that it can serve as a claim, a defense, or a basis for provisional measures.

Among the illustrative examples she discussed was the pending case *Stankoimport v. Rebeil* before the Swedish courts, with a decision anticipated in 2026. She emphasised that one of the key issues in this case, which holds significant relevance for the broader discussion, concerns whether a company that has made payment but has not received the corresponding goods can justifiably claim a refund under EU public policy.

Prof Mehtiyeva also cautioned against the misuse of war as a force majeure argument. She pointed out that alternative delivery routes, such as through non-sanctioned territories, are often available, and that amending contracts could resolve such issues, thereby making the force majeure claim potentially unjustifiable.

Dr El Ahdab mentioned the tendency for tribunals to favour the parties present in the courtroom, which was often not the case for Russian parties. Mr Ioannou drew on his experience with six investment arbitration cases stemming from Russia's 2014 annexation of Crimea. These cases were brought before the Permanent Court of Arbitration (PCA), and although Russia did not participate, Mr Ioannou observed that the tribunals, to ensure the claimants' cases were fully tested, were highly proactive in posing factual and legal questions to the claimants that Russia would have posed.

Mr Duclos remarked that just weeks prior, it appeared as though globalisation might be nearing its end, particularly with the Trump administration's implementation of aggressive sanctions. He suggested that a new form of globalisation may emerge - potentially one without US influence and instead centred around China and Europe. As evidence of this shift, he referred to the rise of the "*middle powers*" and the very recent free trade agreement between South Korea, Japan and China as a sign of this development.

Shifting to the impact of international tensions on dispute resolution, Mr Le Grix De La Salle explained that armed conflicts elevated the already existing tensions between all parties involved. He identified two primary consequences of this dynamic: first, the reluctance or inability of individuals, including experts, to speak freely due to concerns over retaliation or logistical issues such as visa restrictions. Second, he highlighted the increasing prevalence of digital threats, including cyberattacks and aggressive social media tactics such as misinformation and defamation. While these threats are particularly visible in high-profile conflicts like the war in Ukraine, they are also evident in less-publicised regions, including Sudan and Central Africa.

In light of these challenges, Mr Le Grix De La Salle emphasised the need for arbitration practitioners to adopt a strategic approach that goes beyond the legal realm. He recommended utilising public opinion research and strategic communication and stressed that interactions with diplomats should occur prior to disputes, in order to circumvent confidentiality constraints.

The panel then responded to several questions from the audience, which provided an opportunity to address a range of additional topics. These included the potential value of guidelines to assist arbitrators in navigating sensitive issues such as international humanitarian law, as well as the rejection of economic sanctions by countries in the Global South, often rooted in their own historical experiences. The conference concluded with a reaffirmation of arbitration's continued relevance, both in the short and long term, despite mounting geopolitical tensions.

ARBITRATION OLYMPICS: WHICH SEAT REIGNS SUPREME? BATTLE OF THE SEATS: LONDON, NEW YORK, PARIS OR CALIFORNIA?

By Victoria Festor and Paul-Alexis Saint-Antonin

On Tuesday 8 April 2025, Cleary Gottlieb Steen & Hamilton hosted a dynamic conference exploring the comparative advantages of four of the world's leading arbitration seats: Paris, London, New York, and California. Moderated by Mr Giorgio Sassine (*Senior Associate at Musick, Peeler & Garrett*) and Ms Katie Gonzalez (*Associate at Cleary Gottlieb Steen & Hamilton*), the event, presented by the New York International Arbitration Center ("NYIAC") and California Arbitration ("CalArb"), followed a debate-style format. Panelists Mr Alexis Mourre (*Partner at MCL Arbitration*), Mr Kevin Nash (*Director General at the London Court of International Arbitration*), Ms Caline Mouawad (*Partner at Chaffetz Lindsey*), and Ms Laura Abrahamson (*Arbitrator at JAMS*) each championed their respective jurisdictions, with the audience ultimately voting on their preferred seat.

Panelists were prompted to respond to six key questions. These questions focused on why each seat is attractive for international arbitration, and how traditional powerhouses, like Paris and London, are adapting to stay competitive compared to emerging seats like New York and California. The discussion also highlighted what parties should consider when selecting a seat - including potential weaknesses - and examined the role of local courts in the arbitration process, from their level of involvement to how long they typically take to review awards. Finally, the panel explored how these jurisdictions relate to and influence one another in a constantly evolving arbitration landscape.

Before the panelists took the floor, the audience participated in a live poll focused on their preferred seat for international arbitration. Paris and London emerged as early favorites with nearly equal support.

Paris

According to Mr Mourre, who spoke on behalf of Paris, the lack of interference from state courts - particularly embodied in the principle of competence-competence - is a key advantage. Their involvement is largely limited to a supportive role, such as appointing arbitrators when the parties fail to reach an agreement.

In response to the rise of new arbitration centers, Paris is looking to modernise in order to remain competitive. This is the aim of the 2025 reform project. In particular, it calls for the creation of a dedicated international arbitration code, centralizing and clarifying the rules currently scattered across various legislative texts. Among the innovations of this reform, Mr Mourre mentioned the possibility for a supporting judge to order provisional measures even before an award is final, as well as the designation of the Paris Court of Appeal as the competent court for awards involving state parties.

Mr Mourre also considered that one of Paris's main weaknesses lies in its intrusive public policy review, particularly on issues such as corruption, as well as the instability of its case law in investment arbitration.

The review of arbitral awards in Paris generally takes between one and one and a half years, depending on the complexity of the case. Grounds for annulment include, in particular, violations of due process, procedural irregularities, or breaches of public policy.

London

According to Mr Nash, London naturally stands out as a preferred seat of arbitration due to the presence of one of the world's leading arbitration institutions and the strength and recognition of the London Court of International Arbitration ("LCIA") Rules.

Aware of the need to modernise these rules to preserve its competitiveness, London has undertaken major reforms, including the 2025 revision. While the reform has enhanced the efficiency of arbitration in London - particularly by clarifying the law applicable to the arbitration agreement in the absence of party choice - certain challenges remain such as the possibility of appeals on points of law and the limited use of emergency arbitration, both of which may impact procedural efficiency.

Court intervention in London is strictly limited, as Mr Nash pointed out, referring specifically to the use of anti-suit injunctions. The time frame to challenge an arbitral award is 28 days, and such challenges are only permitted in cases of serious irregularity leading to substantial injustice. In addition, rather than setting aside an award, courts may also remit the matter to the tribunal for correction of identified errors.

Finally, Mr Nash highlighted that over the past six years, LCIA-administered arbitrations have involved more than 70 different seats, underscoring the institution's truly global reach. He also noted that London remains the second most frequently chosen seat in International Chamber of Commerce ("ICC") arbitrations, further cementing its role as a leading hub for international arbitration.

New York

Ms Mouawad advocated for New York and highlighted the city's strong reputation as a pro-arbitration jurisdiction. New York courts consistently enforce arbitration agreements and awards, and they are generally reluctant to set awards aside. What sets New York apart, she noted, is not only its predictability and respect for arbitral autonomy but also its robust infrastructure - legal and otherwise - that supports international dispute resolution.

Generally, the New York Court's involvement is typically limited and supportive - courts may compel arbitration, assist with discovery, or intervene only upon request by the parties.

In terms of award review, procedural rules require a motion to vacate to be filed within three months. The average time from petition for confirmation or vacatur to final judgment in international arbitration cases is approximately 35 weeks, though this may vary slightly. Appeals can take longer, but awards remain enforceable during that time unless a bond is posted. Lastly, Ms Mouawad emphasised that the grounds for setting aside an award in New York are narrow, further reinforcing its reliability as an arbitration seat.

California

Ms Abrahamson, who made the case for California, opened by highlighting the state's strategic geographic position and its status as a global economy. She also emphasised California's pioneering role in arbitration, noting that it was the first U.S. state to adopt the Revised Uniform Arbitration Act - an early signal of its strong institutional support for the arbitral process. In 2024, California amended the California International Arbitration and Conciliation Act of 1988 to incorporate the most recent revisions to the UNCITRAL Model Law, reinforcing its arbitration-friendly legal framework.

Like New York, California courts rarely set aside arbitral awards. However, what distinguishes California is its strong emphasis on arbitrator independence and impartiality. The state imposes some of the most stringent arbitrator disclosure requirements in the world, ensuring transparency and trust in the arbitral process. As for potential drawbacks, Ms Abrahamson noted that third-party discovery is not permitted under California law. Additionally, parties must be mindful of the statute of limitations for enforcing awards.

Court intervention in California is generally limited, but supportive. Indeed, California case law requires courts to draw all reasonable inferences in favor of the award and recognizes strong party autonomy. This includes the ability for parties to contractually expand or limit judicial review standards when enforcing awards.

Finally, Ms Abrahamson noted that California benefits from its role as a hub for global innovation, with tech giants in Silicon Valley and Silicon Beach. With 132 consular representations in the state, California also enjoys a strong international presence, reinforcing its relevance on the global arbitration stage.

At the end of the event, the audience participated in a final poll, with London leading the results. Notably, California saw a rise in interest, with more attendees selecting it as a potential seat for future arbitrations.

ANTI-DOPING & MATCH FIXING RULES AND PRACTICE IN TENNIS & BEYOND - CLARIFICATION & PREVENTION

By Paul Gobetti and Omar Alserdare

On Tuesday, 8 April 2025, as part of the 2025 edition of Paris Arbitration Week, Derains & Gharavi hosted a conference entitled "*Rules and Practices in Anti-Doping and Match Fixing in Tennis and Beyond – Clarification and Prevention*" at the *Loge Présidentielle* of the Philippe Chatrier Court at Roland Garros. The panel was moderated by Mr Hamid Gharavi (*Founding Partner, Derains & Gharavi*), and composed of Mr Gilles Moretton (*President of the French Tennis Federation*), Mr Stéphane Morel (*General Director of the French Tennis Federation*), Mr Giovanni Fares (*Senior Legal Advisor, Court of Arbitration for Sport*), Mr Ulrich Haas (*Professor and Arbitrator at the Court of Arbitration for Sport*), Mr William McAuliffe (*Head of the Disciplinary Unit at UEFA*), and Mr Ben Rutherford (*Senior Legal Director, International Tennis Integrity Agency*). The panel further benefited from the presence of former professional tennis players, notably, Mr Mansour Bahrami (*Former player, Head of the Legends Tournament at Roland Garros and Ambassador of the French Tennis Federation*), Mr Cédric Pioline (*Formerly ranked 5th on the ATP circuit and Director of the Rolex Paris Tournament*), and Mr Fabrice Santoro (*Formerly ranked 17th on the ATP circuit*).

The conference kickstarted with introductory remarks from Mr Gharavi, who presented the various topics that will be addressed during the conference and thanked the speakers, the players and the President of the French Tennis Federation ("FTF") Mr Moretton, and FTF General Director Mr Morel for accepting to open the doors of Roland Garros otherwise closed in preparation of the French Open. He declared that the conference was warranted to provide clarification on the ground rules governing doping to address the allegations of impropriety advanced in the press and social media following the recent Sinner and Swiatek cases and for prevention and eventual reform purposes as far as match fixing was concerned.

President Moretton then took the floor to welcome and express his gratitude to Mr Gharavi for hosting this prestigious and well attended event at Roland Garros.

The first set began with Mr Morel's introductory remarks on the FTF dealing with governance issues in tennis. He highlighted that governance in tennis faces challenges because there are no unified rules, stemming from the presence of at least seven distinct organizations. Mr Morel also emphasized the importance for French tennis and the French Tennis Federation of hosting a Grand Chelem tournament like Roland Garros, both in terms of global exposure and revenue. He then concluded his remarks by giving some hints about the special events that will take place during the 2025 edition of the tournament.

The conversation moved forward with Mr Rutherford providing a comprehensive overview of the International Tennis Integrity Agency ("ITIA"). He explained that this independent agency was created in 2021 based on the need to make greater efforts on the issue of integrity in tennis. Its scope of action focuses on both anti-doping and anti-corruption and its actions can be divided into three main pillars: education, risk, and finally rules and procedures. Following his explanation of the anti-doping regulations and potential sanctions, Mr Rutherford used the well-known *Sinner* case to exemplify such situations and to highlight that the process was in full conformity with the ground rules. This case is particularly informative as it highlights the distinction between intentional and unintentional consumption of banned substances, along with the corresponding sanction in each scenario. He further stressed the importance of greater proportionality in sanctions, considering factors such as age, financial situation, and the player's level. Finally, he noted that such incidents are relatively rare, with approximately ninety cases overall (not more than 5% of the annual caseload).

Mr Haas then discussed how the Court of Arbitration for Sport ("CAS") jurisprudence tackles the issue of anti-doping. He first noted that anti-doping rules are constantly evolving, particularly with the adoption of a unified World Anti-Doping Code in response to Russian and Chinese contamination case scandals. He further emphasised the need to differentiate between substance use and doping, noting that many sanctions are related to the player's failure to declare rather than the act of doping itself.

Interestingly, the fourth set shifted focus to football. Mr McAuliffe elaborated on the significant role played by UEFA's Disciplinary Unit, detailing its responsibilities and the various challenges it faces in maintaining integrity within European football. He first noted that most football cases revolve around common disputes (flares, refereeing decisions, etc.) and that doping or match fixing cases are almost an exception. As an example, he discussed the issue of players taking diuretics, particularly when they are representing their national teams. He explained that these substances are often used to mask the presence of other banned substances, thereby increasing the risk of doping violations. This practice is especially concerning during international competitions, where the pressure to perform can lead athletes to resort to such drastic measures. He concluded his remarks by noting that UEFA is committed to enhancing fair trial guarantees by offering pro-bono legal representation to players. However, he pointed out that the current number of available lawyers is inadequate, largely due to a shortage of expertise in this specialised area of litigation.

The discussions on match fixing continued with Mr Fares addressing CAS' perspective on this issue. Mr Fares explained what "*match fixing*" was fundamentally about. Match fixing is the act of deliberately manipulating the outcome of a sports match to achieve a predetermined result, which violates the rules of the game and often the law. This practice often involves players, team officials, referees, or other stakeholders who may receive bribes or be coerced into ensuring a specific outcome. He interestingly pointed out that individual sports are more susceptible to match fixing because the manipulation of results relies on a single athlete rather than an entire team. He wrapped up his remarks by pointing out that there are no standardised rules for match fixing, especially concerning sanctions which vary by federation, and emphasised that sporting institutions lack adequate resources for evidence collection, necessitating close collaboration with State authorities.

As to the former professional players, they provided practical insights on all issues and responded to the questions put by the Chair and the audience. On doping, they mentioned that athletes competing at a high level cannot micromanage everything and inadvertent flaws inevitably can occur. As to match fixing, they confirmed that average rank players struggle financially as they have fixed costs that can reach 200 thousand euros per year without any certainty of earning this amount. Mr Gharavi added that whereas match fixing needed to be addressed and sanctioned severely, the financial hardship at this level of professional ranking was unfair. And that this reality together with the fact that betting was allowed needed to be addressed and in the meantime life bans be reserved only for exceptional cases.

Before the conference was concluded, a tie-break of questions and answers was held between the panelists, addressing various issues such as the impact of harassment in tennis, the intentional nature of taking medication, and the call from former players for more regulation of sports betting , which they believe leads to match fixing.

Game, Set, and Match! The conference ended beautifully, and participants were invited to continue their discussions over a cocktail at the *Carré*, enjoying a magnificent view of the Philippe Chatrier Court.

DIALOGUE BETWEEN JUDGES: THE ROLE OF THE JUDGE IN CHARGE OF REVIEWING THE AWARD

By Alice Vigneau and Padraic Mc Cafferty

On 9 April 2025, as part of the 2025 edition of Paris Arbitration Week, the Paris Court of Appeal hosted a conference on the role of the judge in charge of reviewing the arbitral award. The panel moderated by Ms Caroline Kleiner (*Arbitrator and Tenured Professor of Law at the Faculty of Law at Université Paris Cité*) included Mr Daniel Barlow (*President of the International Commercial Division of the Paris Court of Appeal*), Mr Philip Jeyaretnam (*President of the Singapore International Commercial Court and Judge of the Singapore High Court*), Mr Robin Knowles (*Judge of the Commercial Court of England & Wales*), Mr Christoph Hurni (*President of the First Civil Law Division of the Swiss Federal Supreme Court*), Mr Olivier Carruzzo (*Clerk of the Swiss Federal Supreme Court*) and Mr Bernd Odörfer (*Judge of the Federal Court of Justice, Germany*).

The conference was opened by Mr Benjamin Siino (*Founding Partner of Gaillard Banifatemi Shelbaya Disputes and Co-President of Paris Arbitration Week*) who underlined the importance of the impetus given by the Paris Court of Appeal in organising their very first event last year, and which is now established.

The First President of the Paris Court of Appeal, Mr Jacques Boulard delivered an introductory speech highlighting the essential role played by national courts in international arbitration and the importance of dialogue between judges from different States and different traditions in this field.

Ms Kleiner then opened the discussion by mentioning the New York Convention of 10 June 1958 ("NYC") and both the harmonisation between the 172 countries that are signatories to the NYC and also the discrepancies that exist, particularly with regard to reviewing the arbitral award. She further noted that jurisdictions are at all times aiming to modernise their national legislation to keep in line with developments worldwide, such as Switzerland in 2021, England and Wales in 2025, Germany in 2025, and France which is at present in a consultation phase regarding an arbitration "*code*". Article V of the NYC deals with setting aside of arbitral awards and Ms Kleiner was keen for the judges to elaborate on differences between Article V and their respective national arbitration legislation.

The floor was first given to Mr Hurni who said the grounds for setting aside an arbitral award were contained within Article 190(2) of the Swiss Federal Act on Private International Law which is "*largely aligned*" with Article V of the NYC, although the ground concerning the conformity of the arbitration procedure with the agreement of the parties (Article V(1)(d) CNY) is not reproduced as such in Swiss law. Furthermore, a mistake of fact does not constitute grounds for challenging an international award. Mr Hurni added that the Swiss judge's control is limited.

Mr Odörfer then explained that there are two different articles in the German Code of Civil Procedure, namely section 1059 for domestic awards and Section 1061 for foreign awards. Section 1059 is based on the UNCITRAL Model Law while Section 1061 incorporates article V NYC, so that there are no fundamental differences apart from those between the Model Law and the NYC.

Mr Jeyaretnam explained that, under Singaporean law, there are two additional grounds for setting aside: fraud and corruption; and breach of principle of natural justice. Fraud and corruption are approached from a public policy perspective and are interpreted narrowly by Singaporean courts. The ground of breach of principle of natural justice involves identifying the principle that has been breached and its impact on the award. Challenges on this ground are rarely successful. At present the Singapore Ministry of Law is looking to reform the Singapore International Arbitration Act 1994, and is in a period of public consultation with one of the areas being discussed being: Whether a right of appeal (including variations of the same) on questions of law is desirable. Mr Jeyaretnam sees this as something that parties may be looking for, as currently, parties are including appeals on points of law into a breach of principle of natural justice.

The floor was then given to Mr Barlow, who pointed out that France, which applies the most favourable clause provided for in Article VII of the CNY, uses the same grounds for examining applications for annulment and appeals against exequatur orders. Article 1520 of the Code of Civil Procedure identifies thus five grounds for annulment and non-recognition. However, exequatur may only be subject to limited review of compliance with international public policy where no appeal is lodged against the order issued by the court of first instance. The "*French exceptionalism*" lies mainly in the fact that the setting aside of an award abroad does not prevent its exequatur in France by virtue of the principle of the autonomy of arbitration.

Mr Knowles then added that arbitration matters should be dealt with by specialised courts. The other panellists agreed, and each specified the system in place in their respective countries.

The discussion continued on the standard applied by the various courts in their review of the award. Mr Barlow explained that the *Belokon* and *Sorelec* judgments of the Court of Cassation in 2022 marked an evolution in the review of international public policy, which is now more thorough. The annulment judge is no longer bound by the arbitral tribunal's legal findings and assessment of the evidence. However, by virtue of the principle of non-review, the judge does not rehear the case but applies a specific review, being able to recognise that certain grounds are contrary to public policy without this calling into question the final award, as illustrated by the *Monster Energy* case.

Mr Hurni pointed out that the French and Swiss approaches differ, particularly with regard to the possibility of reviewing the facts established by the arbitral tribunal. Thus, in a case involving allegations of corruption (the *Alstom* case), the Swiss Federal Supreme Court rejected the action for annulment based exclusively on the factual universe arising from the contested award. Based on the facts established by the arbitral tribunal, it ruled that corruption had not been proven. The Paris Court of Appeal reached the opposite conclusion after reopening the debate on this issue and ordering the production of documents that had not been submitted to the arbitral tribunal.

Mr Jeyaretnam went on to say that the standard of review in Singapore depends on the ground of challenge. For a jurisdictional challenge there is a *de novo* hearing, however the parties can invite the court to refer to the evidence that was presented before the arbitral tribunal. On the other hand, assessing arbitrability is more complex, as it varies considerably from one country to another. Arbitrability is also a ground under Article V(2)(a) of the NYC to refuse recognition and enforcement of an arbitral award. He gave the recent example of an anti-suit injunction that was before the courts, both parties being Indian and relating to a joint venture in India. In January 2023 the Singapore Court of Appeal in *Anupam Mittal v Westbridge Ventures II* found that the proceedings brought before the National Company Law Tribunal in India had been in breach of the applicable arbitration agreement. Shareholder disputes such as shareholder oppression are not arbitrable in India and the parties had specifically this particular class of dispute in mind when they chose Singapore as the seat. Subsequently, in September 2023, the Bombay High Court issued an anti-enforcement injunction in this matter, underscoring how parallel proceedings can intrinsically complicate international arbitration.

Mr Odörfer pointed out that the Federal Court of Justice has developed different definitions for national public policy and international public policy. National public policy does not automatically extend to all binding legal provisions and international public policy has an even more limited scope. Similar to the approach in France, the result of the award is taken into account. Generally, the facts and legal reasoning found by the arbitral tribunal are accepted, in application of the principle of non-revision of the award, but this may be different in cases where public policy is at stake.

Mr Knowles concluded by pointing out that the 2025 reform in England, and specifically the new section 67(3B) and section 67 (3C) restricts the ability to raise new arguments and evidence before judges when challenging the jurisdiction of the arbitral tribunal.

Turning from challenges to jurisdiction to challenges based on serious irregularity, where for the arbitral tribunal or a court there was a concern about what was happening in the arbitration (including the possibility of fraud or corruption) and the question was what should be done, Mr Knowles went on to highlight the value of dialogue that drew on experience of investigation in the civil law systems. He noted that there is increasing pressure in the field of international arbitration, due to the vast sums of money involved, which highlights the need to ensure its proper functioning.

Ms Kleiner then introduced the final theme of the conference on the cooperation between national courts and arbitral tribunals, and the mutual recognition of their decisions.

For Singaporean courts, Mr Jeyaretnam explained that their assessment of foreign decisions varies according to the role of the foreign court in relation to the arbitration. In the case of a decision handed down by the court of the seat, the principle of "*transnational issue estoppel*" applies and the issue decided by the court of the seat is not reconsidered by the Singapore court. On the other hand, if the enforcement court is the first to have been seized, the Singaporean courts may reconsider issues that are not local to that foreign enforcement court.

Judge Knowles was then asked about his involvement with the Standing International Forum of Commercial Courts ("SIFoCC") which he is responsible for managing on a day-to-day basis. SIFoCC is a forum of commercial judges from over 50 jurisdictions, whose objectives are, shared best practice, contributing to the rule of law and supporting developing jurisdictions. Mr Knowles emphasised that judges play a key role and that, in the context of international arbitration, they are on the "*front-line*" whether that is at the court of the seat or at the court for recognition and enforcement, and how beneficial ongoing judicial dialogue is between them.

Mr Odörfer mentioned that in Germany, in general, there is no formal dialogue between judges and arbitrators. However, there are forums such as events held by the German Arbitration Institute where judges and arbitrators can discuss matters at an abstract level. In Switzerland, Mr Hurni pointed out that arbitrators may be asked to express their views on an appeal against their award. The arbitral tribunal may make observations on the appeal, but it is not a party, which is why it does not have a right to be heard. Rather, the aim is to enable the judges to better understand the arbitration procedure and to assess, in full knowledge of the facts, the merits of certain criticisms made by the appellant. Mr Carruzzo added that the Court of Arbitration for Sport, based in Lausanne, regularly files observations on the appeal when invited to do so.

Finally, Mr Barlow pointed out that the report on arbitration reform proposes to enshrine in law the principle of the autonomy of arbitration, without strengthening judicial cooperation in this area. He pointed out, however, that this does not preclude an informal dialogue between jurisdictions, notably through the SIFoCC. The report does, however, introduce some innovations, in particular the possibility for the court to hear the arbitrators, as well as the power to stay proceedings in order to invite the arbitral tribunal to answer a question or rule on a point that has not been submitted to it.

JUS MUNDI AI SUMMIT

By Clara Faravel

On Wednesday, 9 April 2025, as part of Paris Arbitration Week 2025, Jus Mundi, in collaboration with Eversheds Sutherland, hosted the "*Jus Mundi AI Summit*", a conference addressing the impact of Artificial Intelligence ("AI") on international arbitration.

The event kickstarted with Mr Jean-Rémi de Maistre (*CEO and co-founder of Jus Mundi)*, who set the stage by outlining the program of discussion, structured around two panels. The first panel delved into the technical intricacies of AI, and the second shifted focus to the ethical implications surrounding AI.

Mr De Maistre introduced Jus Mundi, a global legal tech company founded in 2019, which collaborates with over 70 institutions to provide seamless access to arbitration-related information through its extensive legal database. The platform is designed in a user-friendly structure, ensuring easy navigation and accessibility, thereby facilitating everyday research for legal professionals. At the heart of his presentation was *Jus AI*, an AI-powered legal assistant crafted to enhance legal research in arbitration. This tool accelerates the research for arbitral awards, provides detailed summaries, translates legal documents, and assists in drafting legal arguments, all through an intuitive interface that simplifies complex tasks. Mr De Maistre also unveiled a new feature: the ability to reconstruct the timeline of key events in complex disputes.

Mr De Maistre further elaborated on key AI concepts, including Large Language Models ("LLMs") and the systems that influence output results. He distinguished between three levels of AI autonomy: the basic level, known as "*Chain*", where autonomy is limited; the intermediate level, referred to as "*Router*", where the AI can determine potential courses of action; and the advanced level, termed "*Agentic*", where the user sets an objective, and the AI autonomously determines the steps to achieve it. Following the introduction of agentic AI, he illustrated the potential risks associated with unsupervised AI use by presenting a film excerpt and a real-world AI prompt example.

The floor was then given to Mr Claude Kirchner (the President of the National Digital Ethics Advisory Committee in France (C.C.N.E.N)), who presented the work of the Committee and highlighted the importance of ethics in the development and utilisation of AI.

The first panel, moderated by Ms Gillian Forsyth (*Senior Partner at Eversheds Sutherland),* featured Ms Marina Stavrinides *(General Counsel at Centric Software*), Mr Romain Lerallut (*Vice President and Head of the Criteo AI Lab*), and Mr De Maistre. Together, they explored the theme: "*Agentic AI: The Next Frontier for Legal Professionals?*"

Ms Forsyth initiated the discussion by asking panellists how AI has impacted their respective sectors. All agreed that AI has been transformative. Ms Stavrinides highlighted its role in optimising business operations, enhancing client experiences, and serving as an effective management tool. Mr Lerallut, who specialises in digital advertising, discussed the use of AI in improving ad appeal and helping retailers monetise their products. Mr De Maistre compared AI's impact to the significant influence that Excel has had in the field of accounting.

The discussion then navigated towards the challenges posed by AI. Ms Stavrinides pointed out the paradox of adaptation, where companies, in their quest to integrate AI, might find themselves facing more work rather than less. Mr Lerallut shed light on the complexities surrounding data disclosure and its economic value, observing a shift from outright opposition to a more nuanced approach of defining fair economic compensation. In this regard, Mr De Maistre noted three key challenges: confidentiality, security, and regulation. He illustrated how Jus Mundi safeguards data through the employment of advanced encryption protocols that ensure and maintain confidentiality. He introduced the "*Bug Bounty*" system, a clever initiative where ethical hackers are financially rewarded for uncovering and reporting software vulnerabilities, turning potential threats into opportunities for fortification.

Agentic AI returned to the forefront of the discussion when Ms Forsyth inquired as to whether it was already making a tangible impact within their organisations. Ms Stavrinides affirmed that there is a growing interest from clients, particularly in the luxury sector, where AI is being employed to personalise marketing strategies and refine product offerings to better meet customer preferences. Mr Lerallut discussed how Agentic AI is fostering creativity by allowing teams to focus on innovative solutions while automating routine tasks, such as summarising meetings, thereby improving efficiency and productivity.

Ms Forsyth then raised the issue of AI hallucinations (false outputs) and the question of liability in the event of errors. Ms Stavrinides stated that the quality of AI output depends largely on input quality. Mr Lerallut agreed, stressing the need to educate users on technological limitations. He compared AI mistakes to human error, suggesting that they should be understood and managed rather than expected to be completely eliminated.

The topic of AI replacing human resources was also addressed. Mr Lerallut explored the potential of using AI to carry out tasks typically handled by junior engineers, with senior professionals overseeing its work. However, he cautioned that this could in fine hinder the professional development pipeline by reducing opportunities for junior staff to gain experience and grow in their roles.

The panel concluded with a discussion on AI's role in dispute resolution. Mr De Maistre acknowledged that while the legal field has been slow to embrace AI, it is now rapidly catching up. He emphasised that AI significantly boosts efficiency and productivity for legal professionals, but pointed out that some roles, particularly those of arbitrators, necessitate human judgment and cannot be entrusted to AI systems.

The second panel, moderated by Mr Alexandre Vagenheim (*Vice President of Global Legal Data at Jus Mundi*), featured Ms Claire Morel de Westgaver (*Partner at Ontier*), Ms Chiann Bao (*Arbitrator at Arbitration Chambers*), and Mr Louis Degos (*President-elect of the Paris Bar Association and Managing Partner at K&L Gates*). They addressed the topic: "*The Rise of a Global AI Governance Framework*".

Ms Morel de Westgaver introduced the Guideline on the Use of AI in Arbitration 2025, developed by the Chartered Institute of Arbitrators ("CIArb"), highlighting the risks associated with AI use and emphasising the importance of applying AI in a way that considers the specific context of every situation. However, she noted that this context-specific approach makes it difficult to implement universal standards.

Ms Bao, taking a more optimistic stance, envisioned a regulatory framework akin to a "*traffic light system*" to guide arbitration practitioners. She pointed to China, where digital systems are already highly integrated, as a potential model for AI adoption in dispute resolution.

Mr Degos compared AI-generated errors to human mistakes, referencing cases where lawyers were sanctioned for using ChatGPT. He argued that these errors are not "*ordinary*" and raised the issue of professional secrecy, affirming that confidential legal information shall not be disclosed.

A video presentation from Mr Kilian Gross (*Head of Unit for AI Policy Coordination and Development at the European Commission*) outlined the EU Artificial Intelligence Act (2024/1689). The regulation seeks to strike a balance between fostering innovation and managing risk, aiming to ensure the ethical adoption of AI technologies.

The closing remarks were delivered by Mr Wesley Pydiamah (*Head of the International Arbitration Practice at Eversheds Sutherland*), who reflected on the coexistence of lawyers and AI. In his view, while AI will not replace international legal professionals, those who fail to adopt these tools risk being outpaced by those who do. He concluded by affirming that AI presents a substantial opportunity to promote efficiency and control costs in arbitration.

UNTANGLING THE WEB: MANAGING MULTI-PARTY AND MULTI-CONTRACT DISPUTES

By Alma Barakat

On Wednesday 9 April 2025, as part of the 2025 edition of Paris Arbitration Week, the Abu Dhabi International Arbitration Centre ("arbitrateAD") (*previously known as the Abu Dhabi Commercial Conciliation and Arbitration Centre (ADCCAC)*), in collaboration with Habib Al Mulla and Partners, hosted a panel discussion at the Sofitel Hotel, focused on the practical and legal complexities arising out of multi-party and multi-contract arbitration disputes. The panel featured a distinguished line-up of experts in the field, notably Arno Janssens, the host speaker (*Legal Counsel at arbitrateAD*), Dr Habib Al Mulla (*Founder of Habib Al Mulla and Partners*), Dr Karen Seif (*Counsel at Habib Al Mulla and Partners*), Mr Karim Nassif (*Partner at Nassif Arbitration*), Mr Michael Arada Greenop (*Counsel at Wilmerhale Cutler Pickering Hale and Dorr LLP*), and Dr Zeina Obeid (*Partner at Obeid & Partners*). The discussion offered practitioners an insight into the approach to joinder, consolidation, and multi-contract arbitrations taken by arbitral institutions, arbitrators, and counsel in the Middle East.

The conversation unfolded in three distinct phases that parties typically undergo: contract negotiation, dispute, and arbitration proceedings. It provided a structured view of how these disputes emerge, escalate, and are ultimately addressed within arbitral proceedings.

Mr Janssens began the discussion by outlining key innovations introduced by the 2024 arbitrateAD Arbitration Rules, which have replaced its predecessor ADCCAC, with a particular focus on joinder and consolidation. 'Joinder' refers to the procedural mechanism that allows a third party to join an existing arbitral proceeding. This can occur at the request of an existing party, or, under the arbitrateAD Rules, at that of a third party. This procedural tool is increasingly relevant in complex commercial disputes, particularly in construction and energy sectors, in which multiple agreements with multiple parties are common.

Mr Janssens highlighted that, under most institutional rules, there are three important questions to consider when assessing a request for joinder: Is there an existing arbitration agreement with the third party? What happens if the joinder request is made after the arbitral tribunal has already been constituted? Who has the right to submit the request?

In contrast with the International Chamber of Commerce ("ICC") Rules – where the consent of all parties, including the new third party, to both the composition of the arbitral tribunal and the Terms of Reference ("ToR") is required if the joinder request is submitted after the appointment of an arbitrator – the arbitrateAD Rules adopt a more flexible stance. For instance, under the arbitrateAD Rules, the ToR are not mandatory, thereby removing a potential procedural hurdle. Mr Janssens noted that agreement by the additional party to the constitution of the arbitral tribunal remains a requirement even under the arbitrateAD Rules. However, importantly, joinder under the arbitrateAD Rules does not require the consent of all parties. Even after the constitution of the tribunal, the arbitrators may grant a joinder request by assessing whether the tribunal has *prima facie* jurisdiction over the additional party, the timing of the request, possible conflicts of interests and the impact of the joinder on the arbitral procedure. Mr Janssens emphasised that this is one of the ways in which arbitrateAD seeks to streamline proceedings while upholding efficiency and fairness.

Dr Seif inquired about how the Multi-Party Joinder is taken into consideration in the MENA region, and in what cases the courts have accepted the extension of arbitration clauses to third parties, to which Ms Obeid provided a regional perspective on how the courts in the MENA region have addressed these extensions of arbitration clauses to third parties. Her analysis emphasised the divergence in judicial approaches across jurisdictions.

In Egypt, for instance, early decisions in the late 1990s recognised the possibility of extending arbitration clauses where agreements were considered inseparable. This position evolved over time, as illustrated by a 2018 decision reaffirming this principle, and further developed in 2022, where Egyptian courts extended arbitration agreements to non-signatories based on the "*Group of Companies*" doctrine, which is a legal principle that allows non-signatory companies within a corporate group to be bound by an arbitration agreement if their conduct and relationships with the signatory parties justify such inclusion.

In Lebanon, the judiciary has long mirrored the French approach. Starting in 2008, the Lebanese Court of Appeal acknowledged the possibility of clause extension where interrelated contracts existed. The Court of Cassation subsequently confirmed this stance in 2014. Although the "*Group of Companies*" doctrine was referenced in 2018, it was not applied outright — demonstrating a cautious but open attitude.

Turning to Bahrain, Dr Obeid explained that the courts traditionally adhered strictly to the "*Doctrine of Privity*", which, in contrast to the "*Group of Companies*" doctrine, is a principle that states only the parties involved in a contract can enforce or be bound by its terms, excluding third parties from having any rights or obligations under the contract. However, a 2024 ruling marked a significant departure, extending an arbitration clause from a subcontractor to a main contractor.

In the UAE, courts have taken a similar trajectory. A 2017 decision recognised a "*Chain of Contracts*" doctrine, which refers to the principle that allows for the enforcement of contractual obligations through a series of interconnected contracts ensuring that obligations and rights are passed down the chain. In 2022, the courts reinforced this position by allowing arbitration clauses to bind parties across a corporate group when their contractual obligations were tightly interwoven. Nonetheless, inconsistency persists — as demonstrated by two conflicting rulings issued in October 2023, one permitting and the other rejecting clause extension.

The discussion was then turned to the practical occurrence of multi-party disputes from the outset in arbitration proceedings. Dr Seif asked Mr Janssens how often arbitral tribunals encounter these scenarios in practice. He elaborated by referring to the ICC's 2023 case statistics, noting that almost a third of ICC arbitrations dealt with multiple parties in some form.

Based on these figures, the importance of anticipating potential Consolidation or Joinder scenarios during the contract drafting phase was emphasised. Particularly in sectors such as construction, where layered subcontracting and interconnected agreements are standard and common practice, it is imperative to draft identical or at least harmonised arbitration clauses across all relevant contracts. Mr Janssens equally touched on innovative practices such as the Singapore International Arbitration Centre's provisions on coordinated arbitrations, which offers an expedited yet flexible approach to bringing related claims under one umbrella.

Dr Seif then introduced the topic of third-party intervention, distinct from Joinder. This can occur when the third party has a significant interest in the subject matter of the dispute and their absence might impair their ability to protect that interest or leave existing parties subject to multiple or inconsistent obligations. Mr Nassif started the discussion with Article 11(1) of the arbitrateAD Rules, which permits intervention by a third party under certain conditions.

Among the critical issues Mr Nassif raised were: What procedural safeguards apply to the intervening party? Must the existing parties and the tribunal consent to their participation? What rights does the intervening party acquire upon entry — can they challenge procedural conduct or object to the ToR? Particularly when the arbitral tribunal has already been constituted, does intervention imply consent to the tribunal's composition, or can this be contested?

Mr Nassif further addressed the delicate balance between inclusivity and confidentiality. Interventions may complicate confidentiality obligations, especially when the arbitration involves commercially sensitive information. Article 47 of the arbitrateAD Rules provides an exhaustive confidentiality framework, yet its interaction with third-party rights remains ambiguous. The panel debated practical solutions, including the issuance of a preliminary "*Notice of Dispute*" and the drafting of express confidentiality waivers or disclosures. Another suggestion was the creation of master arbitration clauses that pre-authorise Consolidation or Joinder.

Mr Greenop closed the panel with remarks on the arbitral phase, shedding light on the procedural challenges that arise once a third party enters ongoing proceedings. He underscored the practical dilemma in which a newly joined or intervening party did not participate in selecting the arbitral tribunal. In such a case, he explains how questions of legitimacy and due process do often arise, specifically if the new party raises objections to the tribunal's jurisdiction or even composition. Mr Greenop advises that such challenges could be best preempted and addressed at the contract drafting stage, reiterating the earlier call for aligned arbitration clauses across all interrelated agreements.

In conclusion, it was agreed that the increase in multi-party and multi-contract arbitration reflects a broader evolution, especially in construction and transactional contracts. As these transactions become more complex, interdependent, arbitration must evolve in tandem. Institutional rules – such as those adopted by arbitrateAD – are making efforts to accommodate these developments. However, the challenge ultimately lies with practitioners and parties anticipating this complexity from the first phase of the process: the contract drafting. As Mr Greenop jokingly pointed out, even though the dispute resolution contract is drafted at the very end, and possibly at 2AM when everybody wishes to go home, parties often forget that it is the most important. Through thoughtful drafting, harmonisation of clauses, and early identification of dispute management strategies, parties can easily mitigate the risks posed by overlapping claims and fragmented proceedings.

NAVIGATING CROSS-CULTURAL DYNAMICS IN INTERNATIONAL ARBITRATION

By Meily Lam-Khounborind

On Day 3 of Paris Arbitration Week 2025, Rajah & Tann hosted a deeply reflective and well-attended event titled "*Navigating Cross-Cultural Dynamics in International Arbitration*" at the Hyatt Paris Madeleine. The panel brought together leading voices from across Asia, the Middle East, and Europe for a candid discussion on how cultural nuance shapes communication, expectations, and fairness in arbitral proceedings.

The session opened with welcoming remarks by Mr Kelvin Poon SC (*Deputy Managing Partner and Head of International Arbitration, Rajah & Tann*), who underscored the importance of cross-border dialogue and mutual understanding in arbitration practice today.

Moderated by Dr Vanina Sucharitkul (*Partner, Rajah & Tann*), the panel featured Mr Shilin Huang (*Foreign Counsel*) and Mr Chuan Thye Tan SC (*Senior Counsel and Partner*) from Rajah & Tann, alongside esteemed guest speakers: Dr Hamid Gharavi (*Founding Partner, Derains & Gharavi*), Dr Mahmood Hussain (*Founding Partner, M&CO Legal*), and Ms Loretta Malintoppi (*Independent Arbitrator, 39 Essex*).

Opening the discussion, Dr Sucharitkul emphasised that international arbitration is inherently cross-border, bringing not only legal complexity but also the nuance of navigating multiple cultures, communication styles, and expectations. Whether serving as counsel, arbitrators, or institutional players, participants carry the influences of their legal traditions, societal norms, and cultural values—sometimes even unconscious biases. She framed the conversation as an invitation to examine how these differences shape communication, negotiation, contract interpretation, proceedings, and perceptions of justice. Greater cultural literacy, she noted, is key to enhancing procedural fairness, reinforcing the legitimacy of the arbitral process, and promoting long-term confidence in awards.

Framing the discussion, Dr Sucharitkul emphasised that cultural awareness is not merely a matter of soft skills or etiquette—it is fundamental to ensuring procedural fairness, party trust, and the overall legitimacy of the system. In international arbitration, the arbitral process—including notions of arbitrator independence, advocacy, and perceptions of justice—is deeply shaped by cultural undercurrents.

The panel first explored how different legal traditions—civil, common, Islamic, and customary law—shape participants' instincts and expectations throughout arbitration proceedings.

Ms Malintoppi recounted an early-career experience where French and Spanish counsel exhibited starkly different attitudes to dress and forms of address. The Spanish counsel, dressed in sneakers and using first names, contrasted with the formality of the French counterpart in a suit—leading the latter to suspect undue familiarity, despite none existing. This illustrated how professional style differences can colour perceptions.

Mr Huang illustrated this point by recounting a scene from the Tony Award-winning play *Chinglish* (written by David Henry Hwang), where two characters, despite sharing the same underlying intention, reach diametrically opposite outcomes due to differing cultural interpretations. This story resonated strongly with the audience and reflected the deeper challenges of cross-cultural communication—even when the parties shared the same language.

Dr Gharavi turned attention to the impact of differing communication styles within tribunals. Divergent approaches to mission, independence, and case management can quietly cause friction among arbitrators. He also emphasised the importance of recognising that cultural differences should not be confused with the quality of counsel: in some jurisdictions, pleadings and witness statements may be notably brief, risking *ultra petita* or *infra petita* findings if tribunals are not vigilant in ensuring that parties properly articulate their claims or defenses. Communication styles—ranging from excessive deference to reluctance in correcting assumptions—can further complicate the evidentiary process and must be interpreted within their cultural contexts rather than through a rigid lens.

Turning to developments in the Middle East, Dr Hussain observed that the arbitration landscape is shifting as more diverse participants from the business and professional communities influence emerging practices. He called for arbitration frameworks to better reflect changing expectations and social dynamics, beyond traditional legal formalities.

Mr Tan raised the poignant question of what "*culture*" means in a "*melting pot*" society like Singapore, sparking laughter among the audience. He discussed ongoing reforms to the International Arbitration Act—particularly the introduction of an appeal mechanism—and the potential cultural and systemic impact such changes may have on Singapore's arbitral framework.

The panel then turned to arbitrator challenges. Ms Malintoppi noted that in jurisdictions like Italy, parties and counsel are reluctant to raise challenges even when justifiable concerns exist. In contrast, Dr Sucharitkul explained that in Thailand, the IBA Guidelines on Conflicts of Interest remain relatively unfamiliar, leading to frequent challenges—even on baseless grounds. The mere challenge, even if frivolous, can result in the arbitrator resigning in order to "save face", leading to an abuse of process. This highlighted how cultural approaches to conflict and decorum can influence procedural dynamics.

The discussion also examined contract interpretation. Mr Huang observed that in Chinese contexts, a "*yes*" may be qualified or conditional, masking disagreement or caution beneath affirmative language. Misinterpreting such responses can derail negotiations. Dr Hussain added that in Shariah-influenced systems, concepts like loyalty and employer-employee relations can subtly affect the way evidence and testimony are presented. Dr Gharavi emphasised that while cultural awareness is important, contract interpretation should remain anchored in the applicable governing law. Ms Malintoppi acknowledged this, noting that even experienced practitioners are not immune to unconscious biases that can affect their interpretation.

On the topic of expert evidence and "*hot-tubbing*", Ms Malintoppi discussed how power dynamics—such as a junior expert testifying against a former professor—can influence perceptions of credibility. Dr Hussain noted that in some jurisdictions, extensive witness preparation may be viewed with skepticism, potentially undermining credibility. Mr Tan observed that non-native English speakers often face an uneven playing field in cross-examination.

Dr Gharavi pointed out that cultural traditions regarding witness testimony also differ widely: while common law systems demand direct "*yes*" or "*no*" answers, other traditions favor more expansive explanations—sometimes misconstrued as evasiveness. He advocated for greater procedural flexibility and highlighted the importance of preparing witnesses thoroughly, in collaboration with local counsel. As he put it, "*Everyone eats their yogurt in their own way*".

Before concluding, Dr Sucharitkul invited the panel and audience to reflect on a final question: In cases where parties and arbitrators come from different legal and cultural backgrounds, who should adapt to whom? Is there a middle ground that promotes mutual understanding and procedural coherence?

What emerged clearly is that cultural competency is a critical tool for fairness, credibility, and trust in international arbitration and should be part of a continued dialogue in the field.

MIDNIGHT CLAUSES, FROM DARKNESS TO LIGHT - DRAFTING A DISPUTE RESOLUTION CLAUSE: BEST PRACTICES AND PITFALLS TO AVOID

By Vaïtéa Baillif and Yasmine Bendouba

On Wednesday, 9 April 2025, as part of the 2025 edition of Paris Arbitration Week, the Association des Avocats Conseils d'Entreprises (ACE) hosted a conference dedicated to the drafting of dispute settlement clauses. This event aimed to provide a cross-perspective from lawyers, general counsels, and arbitrators on arbitration clauses, mediation clauses, and jurisdiction selection clauses, essential tools for anticipating and managing contractual disputes. The panel focused both on the legal and practical implications of the drafting of such clauses.

The panel was moderated by Mr Julien Maire du Poset (*Partner at Lead up*) and Ms Valérie Morales (*Partner at MELIOR AVOCATS and President of the International Section of ACE*), and featured Mr Charles Marquand (*Arbitrator, lawyer at the Paris Bar, and barrister at 4 Stone Buildings*) and Ms Ana Prado Blanco (*General Counsel of Mercedes Benz France*). The entire panel shared their expertise on the common pitfalls and best practices in drafting midnight clauses, so called because they are often drafted hastily at the end of the negotiation process.

The panelists first highlighted the strategic role of these clauses in trade relations. Mr Maire du Poset pointed out the traditional distinction between three types of clauses: choice of jurisdiction clauses, arbitration clauses and mediation clauses. He emphasised that, under French domestic law, jurisdiction clauses were only valid between traders in accordance with Article 48 of the French Code of Civil Procedure. However, their validity is generally accepted in an international context, subject to their compliance with specific rules.

Ms Morales complemented this analysis by referring to European Union law. She recalled that, under the Brussels I bis Regulation, the validity of a jurisdiction clause is assessed considering the law of the country designated by the clause and subject to compliance with the principle of foreseeability. Recently, the Court of Justice of the European Union (CJEU), in response to a referral from the French Court of Cassation, upheld the validity of asymmetric clauses, that is, clauses requiring one party to bring proceedings before a specific court, while allowing the other party greater freedom to choose its forum. The CJEU ruled that, unless expressly prohibited by the Brussels I bis Regulation, the mere fact that one party has more rights than the other does not invalidate the clause, provided that the choice of jurisdiction is limited to the courts of EU Member States or of the Lugano Convention (CJEU, 27 February 2025).

The discussion then focused on arbitration clauses. Mr Maire du Poset explained that, under domestic law, such clauses are enforceable only in the context of professional activities. However, in international arbitration, this limitation doesn't exist. French courts appreciate the validity of these clauses referring to substantive rules. When the parties wish to provide for a mandatory attempt at amicable settlement, Mr Maire du Poset stressed that an arbitration clause must include time constraints for the negotiation phase. In the event of an emergency, the parties will always be able to refer the matter to the emergency court before the deadline expires.

Mr Maire du Poset also highlighted the importance for the parties to negotiate the seat of the arbitration and the official language used during the proceedings. The choice of the seat also determines the court with jurisdiction to hear a potential application for annulment of the award. He then emphasised the importance of choosing the seat of arbitration, particularly with regard to travel, as well as the availability of hearing rooms, interpreters, and accommodation. All of these factors must be considered when the parties are negotiating. While online hearings have reduced geographical constraints, the choice of seat remains a pivotal decision.

Mr Maire du Poset took the opportunity to clarify that the choice of certain jurisdictions could affect the translation requirements for documents. Indeed, some jurisdictions, such as the International Chamber of the Paris Commercial Court, allow the parties to submit documents in foreign languages.

Regarding the duration of proceedings, Mr Maire du Poset mentioned an average of 18 months for arbitration, which is a timeline fairly comparable to that of the Paris Commercial Court (16 to 22 months). However, he pointed out that the lack of appeal mechanisms in most arbitrations allows the parties' rights to be secured more quickly. He also highlighted that the cost of arbitration, which is often calculated on the amounts at stake or the hourly rates of the arbitrators, can be an obstacle, particularly for low-value disputes.

Mr Marquand emphasised the need to ensure consistency between the dispute resolution clauses inserted in interdependent contracts. He explained that a disparity in dispute resolution clauses could give rise to conflicts of jurisdiction between courts or arbitration bodies. Ms Morales supported this observation by sharing an experience in which she had invoked the principle of competence-competence (Article 1448 of the French Code of Civil Procedure) to ensure that a pathological arbitration clause was set aside by a State court. Ms Prado Blanco noted that some courts tend to favour their own jurisdiction, which further complicates such situations. According to her, the guarantee of confidentiality offered by arbitration is particularly appreciated by multinationals, especially in the case of contracts concluded between companies belonging to the same group.

Mediation was also at the heart of the debate. Mr Marquand cited an example of mediation used as a dilatory tactic: in a case between a British party and a South African company, mediation had been initiated not to reach an agreement in good faith, but to delay the proceedings. Mr Maire du Poset reacted by emphasising that these abuses were often due to poorly drafted clauses. He argued in favour of clauses with strict deadlines, enabling the amicable attempt to be terminated quickly if no agreement was reached. In his opinion, a competent mediator and a well-drafted clause could encourage prompt dispute settlement and preserve business relations. In the *Saint Valentin* judgment of 14 February 2003, the Mixed Chamber of the Court of Cassation held that, in the presence of an alternative dispute resolution (ADR) clause, an action brought by a party who had gone to court before attempting to settle his dispute amicably was inadmissible.

The panel then discussed the topic of "*dispute boards*", which are widely used for construction disputes. These bodies, which are sometimes composed of technical experts, enable disputes to be settled quickly during the execution of projects, thus avoiding any interruption in the project and enabling the contract to be adapted to the parties' evolving needs.

A large part of the conference was dedicated to the recent experiment concerning the commercial courts in France. The Law No. 2023-1059 of November 20, 2023, on the orientation and programming of the Ministry of Justice for 2023-2027, established a four-year pilot program by creating 12 Economic Affairs Courts to replace Commercial Courts in major cities (Paris, Nanterre, Lyon, Marseille, etc.). In France, there are 134 Commercial Courts, composed of volunteer judges. This reform aims to improve the credibility and speed of decisions, but it also introduces, before these 12 courts, a "*contribution for economic justice*" that will apply to claimants employing more than 250 employees and making initial claims exceeding 50,000 euros. This contribution, which can reach up to 100,000 euros, is calculated by the clerk based on the claimant's turnover. It is payable to the court registry at the time of the summons, under penalty of inadmissibility of the claim. It is refundable in case of withdrawal or amicable settlement and can be imposed on the losing party by a reasoned decision of the judge.

Ms Morales highlighted the procedural strategies implemented to avoid this payment: making initial claims below the 50,000 euro threshold and then raising the claim during the proceedings. She raised the question of the validity of jurisdiction clauses referring to Commercial Courts, which have now become Economic Affairs Courts, and whose access is no longer free. Ms. Prado Blanco compared this reform to a similar attempt in Spain, which had been censured by the Constitutional Court. In France, the Constitutional Council upheld the reform, deeming it a temporary pilot program, which did not violate equal access to justice.

However, Ms Prado Blanco criticised avoidance strategies, believing that they harmed a company's image. Mr Maire du Poset saw the reform as an incentive to favour alternative methods such as arbitration or mediation. Ms Morales reminded that the payment of the contribution must be made, under penalty of inadmissibility of the claim, and she drew attention to the risks associated with the automatic signing of general terms and conditions of sale, where jurisdiction clauses are rarely read but remain enforceable.

To conclude, Ms Morales and Mr Maire du Poset invited young and experienced legal professionals to join ACE. The association offers a dynamic network, high-quality training and regular exchanges on technical and cross-disciplinary issues, including arbitration and amicable dispute resolution.

CIVIL LAW/COMMON LAW IN INTERNATIONAL ARBITRATION

By Stéphy Amégnido and Nada Abouelseoud

On Wednesday, 9 April 2025, as part of the 2025 edition of Paris Arbitration Week, the *Société de Législation Comparée* hosted a conference entitled "*Civil Law / Common Law in International Arbitration*". Introduced by Mr François Molinié, President of the Association, the event brought together practitioners, academics, and young legal professionals for a comparative dialogue on the mutual influence of Civil Law and Common Law traditions in arbitral proceedings. Ms Béatrice Castellane, the vice-president of the association, briefly recalled the genesis of the event, which originated from a collective project that resulted in the publication of "*The Plurality and Synergies of Legal Traditions in International Arbitration*" (N. Comair Obeid & S. Brekoulakis, Kluwer Law International, 2024).

The discussion, moderated by Ms Nayla Comair-Obeid (*Obeid & Partners*), featured three distinguished speakers: Professor Antonio Crivellaro (*BonelliErede*), Mr Ruchdi Maalouf (*Independent Arbitrator*), and Ms Anne-Sophie Goapper (*Aliénor Avocats*). In her opening remarks, Ms Comair-Obeid emphasised the importance of a pragmatic approach that blends contributions from both traditions to reconcile efficiency with fairness.

Professor Crivellaro was the first to speak, addressing the theme "*Civil Law/Common Law: How Their Combined Influence Enhances Procedure and Advocacy in International Arbitration*". He demonstrated how the gradual convergence of these traditions has shaped a hybrid arbitral process, marked by flexibility and pragmatism. At the outset, he reiterated that arbitration is grounded in a foundational principle: party autonomy in defining their own procedural rules. According to him, this flexibility has fostered the emergence of a procedural *Lex Mercatoria,* being a non-ideological merger oriented toward procedural efficiency. This system has evolved through mutual borrowings, visible at each stage of the arbitral process. For example, regarding document production, he compared the Civil Law tradition, selective and committed to confidentiality, with the expansive approach of Common Law. He praised the IBA Rules for striking a middle ground and gaining broad acceptance yet warned against the risk of excesses that mimic the American discovery process, which he labeled "*abusively invasive*". He also examined the evolution of oral evidence, noting that *cross-examination* and *written witness statements* are now widely integrated, although still resisted in some legal cultures. He cautioned against the imbalance that may arise from party-appointed experts, particularly in technical disputes, and advocated for heightened vigilance by the arbitrators. Finally, he highlighted the hearing as a central moment, describing it as a procedural "*duel*" observed by a generally passive yet attentive arbitrator. He concluded with a call for an equilibrium between flexibility and procedural rigor, invoking Aristotle and Cicero to remind the audience that advocacy remains an art of persuasion in the service of procedural truth.

Mr Maalouf followed with a presentation on *Force Majeure in International Supply Contracts*, focusing particularly on LNG Sale and Purchase Agreements (SPAs). Mr Maalouf sought to dissect the gap between legal theory and contractual practice, offering an insider's perspective. He highlighted the radically different understandings of force majeure across legal traditions: in Civil Law, it is a standalone concept recognized by statutory law; in Common Law, it only exists if expressly included in the contract. According to Mr Maalouf, the key issue lies not in the definition, but in how the clause is conceptualized, drafted, and operationalized in real-life scenarios. In practice, most operators invoking force majeure have neither read the clause nor understood its implications. He traced the escalation process typical of such situations: initial communication between operational teams, efforts at commercial resolution, involvement of in-house counsel, and, only in extreme cases, referral to external legal advisors or arbitrators. The arbitrator, he noted, sees only the "*tip of the iceberg*" - the pathological cases. He illustrated this with the dispute between Gazprom and a European buyer in the wake of a Russian decree requiring payments in rubles. The arbitral tribunal had to determine whether the decree constituted a *force majeure* event (*Gasum Oy v. Gazprom Export LLC, Ad hoc Arbitration, Final Award (14 November 2022), CISG-online 7151*). Mr Maalouf underscored that such clauses, far from being abstract justice mechanisms, are sophisticated risk management tools requiring precision and contextual sensitivity.

Finally, Ms Goapper addressed the topic "*The Principle of Good Faith in Construction Projects and Related Disputes: A Civil Law/Common Law Perspective*". She observed a growing interest in this principle within international arbitration, especially in matters involving delays, unforeseen circumstances, or contract termination. This resurgence raises a fundamental question: does good faith still represent a genuine point of divergence between legal systems? From the French perspective, she recalled, the obligation of good faith has long existed and was reinforced by the 2016 reform, which extended it to the negotiation and formation of contracts (Article 1104 of the French Civil Code). It is a matter of public policy, reflecting a structural commitment to contractual loyalty.

By contrast, English law remains hesitant to recognise a general obligation of good faith, viewing it as a threat to legal certainty. However, in certain relational contracts, those that are complex and long-term in nature, there is a growing tendency to imply a duty of cooperation. Ms Goapper accordingly questioned the concrete efficacy of the good faith principle: can it allow for reinterpretation or even correction of the contract? In French law, the answer is no - the judge shall not alter the contractual balance in the name of equity. International arbitrators, however, seem to adopt a broader approach to this principle. In arbitral practice, good faith often serves as a balancing tool, enabling legally sound and commercially reasonable solutions. Consequently, she concluded that, in her view, the true divide lies no longer between legal traditions but between the state court and arbitral forum.

The question-and-answer session allowed for a deeper exploration of the good faith principle. Ms Comair-Obeid recalled its foundational role in Islamic law, particularly in the Middle East, where it is deemed imperative. She invited Ms Goapper to elaborate on how arbitrators should approach the concept. In response, Ms Goapper emphasised that arbitrators prioritize the parties' interests, in contrast with state judges who tend to adopt a more rigid approach. Ms Goapper added that arbitration - thanks to its oral proceedings and reliance on witness testimony - facilitates a clearer demonstration of good or bad faith.

BUILDING A CAREER IN INTERNATIONAL ARBITRATION: INSIGHTS AND PRACTICAL ADVICE

By Maya Konstantopoulou

On Wednesday 9 April 2025, Three Crowns hosted an event titled "*Building a Career in International Arbitration: Insights and Practical Advice*", bringing together leading practitioners to share their experiences and professional journeys.

The panel included Mr Juan Pablo Argentato (*Managing Counsel, ICC*), Mr Matthieu Boccon-Gibod (*Partner, LX Avocats*), Professor Thomas Clay (*Professor and Partner, Clay Arbitration*), Ms Yasmin Mohammad (*Director, Fortress Investment Group*), Ms Nathalie Meyer Fabre (*Partner, Meyer Fabre Avocats*), Mr Jérôme Ortscheidt (*Lawyer at the Conseil d'État and Court of Cassation*), Ms Maria Irene Perruccio Lourie (*Head of International Affairs for Europe and the Americas, WeBuild Group*), and Ms Shaparak Saleh (*Partner, Three Crowns LLP*). The panel was moderated by Mr Etienne Vimal du Monteil (*Senior Associate, Three Crowns LLP*) and Ms Eugénie Wrobel (*Associate, Three Crowns LLP*).

Each speaker addressed three key questions:
Why did you choose arbitration?
What were the pivotal moments in your career?
What advice would you give to your younger self and to young practitioners today?

Their insights offered a broad and diverse perspective on how to shape a career in international arbitration, providing valuable reflections and advice drawn from their individual journeys.

Mr Argentato stressed the importance for foreign lawyers to have their legal qualifications recognised in France upon arrival. He highlighted the need to cultivate a passion for arbitration, engage with it actively, and aim to contribute a personal perspective or written work on the subject.

Mr Boccon-Gibod focused on the freedom offered by the legal profession. He encouraged lawyers to take risks and embrace the challenges the profession presents. By committing fully to the work, opportunities will naturally follow.

Professor Clay reflected on the key milestones that shaped his career, notably his doctoral thesis and his qualification as an academic. He noted how significantly the professional environment has evolved since the beginning of his career. His foremost advice to aspiring practitioners: work hard — international arbitration is demanding, and success comes only with genuine effort. He also underscored the importance of building and maintaining a strong professional network. He closed with a simple yet powerful reminder: "*Never betray those who place their trust in you*".

Ms Mohammad encouraged individuals to define success on their own terms, rather than conforming to others' idea of achievement. She highlighted the importance of seeking out inspiring role models, as they can offer the motivation and momentum needed to progress. She also emphasised the enduring value of human relationships, from one's time at university to the most senior stages of a career.

Ms Meyer Fabre described founding her own firm as a defining moment, which opened up a series of opportunities linked to her independence from large firms. She also emphasised the importance of rigorous and sustained work. In her view, it is crucial to build a strong foundation in law from the outset of one's studies. In practice, she advises gaining exposure to a wide-ranging and varied practice, particularly in arbitration-related litigation.

Mr Ortscheidt reflected on the importance of his thesis, his book, and several key cases in shaping his career. He stressed the need to seize opportunities that provide solid, in-depth legal training. He also highlighted the human aspect of the profession, stressing the importance of maintaining strong relationships and treating others with respect at all times.

Ms Perruccio Lourie noted that "*luck plays a big part*" in one's career. However, it's essential to seize opportunities, even when they require significant time and effort. Sometimes, tough decisions need to be made, but in the long term, they are often highly rewarding.

Finally, Ms Saleh spoke about the pivotal role that meaningful relationships have played in her career. She stressed the importance of a solid legal foundation, based on a deep understanding of a legal system. She also encouraged taking initiative, stepping outside one's comfort zone, and embracing challenges — all essential for progress in such a demanding field.

This diversity of perspectives offered a comprehensive and insightful view of the various ways to build a career in international arbitration.

SHOULD I STAY OR SHOULD I GO? RESPONSIBLE BUSINESS IN UNCERTAIN TIMES

By Wissal el Mahmoudi and Anna Louka

On Thursday, 10 April 2025, A&O Shearman organised an event as part of the ninth edition of Paris Arbitration Week, focusing on the legal, ethical, and operational challenges multinational companies face when conducting business in conflict-affected or high-risk regions. Moderated by Ms Jennifer Younan (*Partner at A&O Shearman*), the panel featured Ms Alisa Helbitz (*Co-Managing Partner at Marlow Global*) and Mr Arthur Sauzay (*Partner at A&O Shearman*).

Ms Younan opened the discussion by highlighting the alarming context surrounding the topic in 2024: over 110 active conflicts worldwide affecting nearly one in eight people. The increase in conflicts in recent years exposes multinational businesses to severe risks, including security threats, reputational risks, human rights violations, and the risk of sanctions. She explained that the panel would explore how companies identify and respond to these risks, what drives decisions to exit conflict zones, and what legal obligations may apply.

The conversation then continued with Ms Helbitz, who advises companies on managing these types of risks. Marlow Global helps businesses navigate challenging situations, such as during politically tense periods or when entering unfamiliar markets. Ms Helbitz addressed the growing legal exposure that businesses face beyond the UN Guiding Principles and OECD Guidelines. She underlined that new legally binding rules, such as the Duty of Vigilance Law in France, are beginning to emerge. On this topic, Ms Younan cited a recent report published by the Club des juristes which revealed that 13 criminal investigations against companies for human rights violations in conflict zones were initiated in France in 2024. The same report highlighted that 70% of French multinationals are now subject to the Duty of Vigilance Law, and that transnational human rights litigation has increased by 50% since 2018.

In the next part of the discussion, Mr Sauzay recalled a major turning point for French legislation: the 2013 Rana Plaza disaster in Bangladesh. The collapse of this building housing subcontractors for major brands showed a legal loophole: it was nearly impossible to hold parent companies accountable for human rights violations in their supply chains. In response, France introduced the Duty of Vigilance Law in 2017. The Duty of Vigilance Law is legally binding. While the original provision for financial penalties was struck down by the Constitutional Council, companies can now be held civilly liable before the French courts. Several legal actions related to environmental and human rights issues have already been brought under this law.

Mr Sauzay also noted that this approach is gaining ground at the European level. He pointed to two major directives: the Corporate Sustainability Reporting Directive ("CSRD"), which expands transparency obligations, and the Corporate Sustainability Due Diligence Directive ("CSDDD"), which builds directly on the French model to require companies across the EU to take preventive actions. Additional regulations are in the pipeline, including a draft regulation on forced labour that could allow authorities to block products linked to serious risks.

He wrapped up his remarks by noting, for arbitration professionals, that the records created by these new transparency obligations could soon offer valuable insights into companies' operations, including their value chains and risk exposures, that may be pertinent for disputes. Finally, he reminded the audience that human rights have long been at the centre of corporate litigation, especially in cases brought by NGOs, such as those targeting oil companies like Shell in Africa. Some of these actions have led to actual convictions, showing that legal risks are far from theoretical.

Ms Younan elaborated on how these issues may arise in arbitration. In the investment-treaty arbitration context, these may, for example, present as claims: (i) for expropriation; (ii) relating to forced fire sales (where companies are forced to exit a jurisdiction rapidly, often leading to significant financial losses); and (iii) under "*War Clauses*" (which provide protection to investors in times of war or civil disturbance). She also referred to certain bilateral investment treaties that impose duties on investors, including the 2016 Morocco-Nigeria BIT, which imposes obligations related to environmental, social, and governance (ESG) standards. On the commercial arbitration side, Ms Younan noted that disputes may arise regarding the interpretation and enforceability of ESG-related clauses in contracts, such as representations and warranties concerning environmental and labour regulations, as well as human rights due diligence obligations.

To conclude, the conversation turned to the role of governments in supporting companies operating in challenging or high-risk environments. Mr Sauzay pointed out the conflicting objectives that states often face. On one hand, many countries demonstrate a strong commitment to protecting human rights, both within their own territory and abroad, by adopting increasingly ambitious legislation. On the other hand, these very same countries also aim to preserve the competitiveness of their national businesses, which can lead them to limit legal actions that may harm their economic interests.

The conversation demonstrated that the decision of "*Should I stay or should I go*" goes beyond considering a single factor. As the responsibilities of multinationals have transitioned from soft law to express legal obligations, it has become increasingly important for businesses and their legal counsel to be aware of the risks discussed, both as part of responsible businesses, and to avoid the potentially costly price of not doing so.

JUS MUNDI NEXUS: THE INSTITUTIONS SYMPOSIUM

By Sara Cadena

On 10 April 2025, during Paris Arbitration Week, Jus Mundi hosted a symposium at Le Meurice Hotel. From 8:30 am to 1:30 pm, the event explored the evolution, challenges, and accomplishments of international arbitral institutions, drawing on insights from leading experts.

The symposium focused on the diverse and evolving roles of international and regional arbitral institutions. Its objectives were twofold. First, to deepen the institutional perspective of international arbitration, and second, to offer an opportunity for the attendees to strengthen their connections within the arbitration community.

To start with, Jus Mundi is an innovative legal tech company that democratizes access to international arbitration knowledge through Artificial Intelligence ("AI"). It offers legal professionals' data-driven tools that enhance productivity, research, and global arbitration accessibility.

The event opened with a keynote presentation by Mr Jean-Rémy de Maistre, Co-founder and CEO of Jus Mundi. He reaffirmed the company's mission of promoting international law and global justice through innovation and transparency and highlighted Jus Mundi's latest initiatives, including AI-generated award summaries, new transparency tools, and the launch of the AAA-ICDR Library, an online dispute resolution journal.

The three sessions featured a varied panel with distinct moderators. The first session, moderated by Ms Bianca Longo Campos, Managing Director of Brazil at Jus Mundi, focused on key developments in institutional arbitration. Panelists included Mr Rodrigo Garcia Da Fonseca *(Counsel, CAM-CCBC (Center for Arbitration and Mediation of the Chamber of Commerce Brazil-Canada))*, Ms Madeleine Thörn *(Deputy Secretary General and Head of Operations, SCC (SCC Arbitration Institute)*, Ms Niamh Leinwather *(Secretary General, VIAC (Vienna International Arbitration Centre))*, Ms Patricia Vera Nieto *(Director of the AMCHAM (Arbitration and Mediation Centre of the Ecuadorian-American Chamber of Commerce))*, and Mr Luis Martinez *(Vice-President, ICDR (American Arbitration Association - International Centre for Dispute Resolution))*.

The second session, moderated by Mr Alexandre Vagenheim, Vice-President of Global Legal Data at Jus Mundi, focused on transatlantic perspectives in the Americas and Europe. The panelists included Mr Alexander Fessas *(Secretary General, ICC (International Chamber of Commerce))*, Ms Joanne Lau *(Secretary General, HKIAC (Hong Kong International Arbitration Centre))*, Mr Kevin Nash *(Director General, LCIA (London Court of International Arbitration))*, Mr Vivek Neelakantan *(Registrar, SIAC (Singapore International Arbitration Centre))*, and Mr Robert Stephen *(Registrar, DIAC (Dubai International Arbitration Centre))*.

Lastly, the third session, moderated by Ms Victoria Krapivina, Director of Global Partnerships at Jus Mundi, explored the evolving role of arbitration centers. The panelists included Mr Christian P. Alberti *(Chief of ADR and General Counsel, SCCA (Saudi Center for Commercial Arbitration))*, Ms Nakasamba Banda *(Secretary General, LIAC (Lusaka International Arbitration Centre))*, Ms Diana Bowman *(Secretary General, ACICA (Australian Centre for International Commercial Arbitration))*, Mr Henry Murigi *(Registrar and CEO, NCIA (Nairobi Centre for International Arbitration))*, and Ms Emmanuelle Pui-Ki Ta *(Secretary General, KCAB (Korean Commercial Arbitration Board))*.

The first session explored recent developments in institutional arbitration, covering procedural innovations and emerging challenges. It focused on how arbitral institutions adapt to evolving dispute resolution needs while upholding core principles like efficiency, integrity, and global accessibility.

Ms Longo started the session by asking the panelists how arbitral institutions deal with political sanctions and economic changes. Ms Leinwather responded first, highlighting the importance of transparency and fairness in handling political sanctions, ensuring impartial arbitrator selection, and disclosing payment processes. Then the floor was yielded to Madelaine Thörn, who underlined three main challenges for the future of arbitration that the SCC was facing. The first one concerned the integration of AI and technology in arbitration proceedings. The second one related to Diversity and Inclusion, particularly the representation of women within the Center and the need to create neutral venues to ensure broader access to arbitration, including participation of individuals from different nationalities, and the third one focused on sustainability. She highlighted how green arbitration was being implemented at different stages of the proceedings. For example, through digital case management, the mandatory use of the SCC online platform, the updated request for arbitration forms introduced in 2024, and the ongoing need to adopt stronger ecological practices for the future of arbitration. Afterwards, Mr Martinez, discussed how AI and technology mitigate the impact of sanctions, citing examples from Ecuador and Mexico, where institutions collaborate to streamline arbitration processes. Then, the panel addressed Latin America's arbitration landscape; in this matter, Mr Da Fonseca highlighted Brazil's growing role as a mediation-friendly jurisdiction, while Ms Vera Nieto addressed regional economic challenges, including rising investment arbitration claims, according to the Transnational Institute report, and the need for stronger regulatory frameworks. Regarding the use of technology and sustainability in arbitration, panelists agreed on the adoption of AI, including virtual hearings and digitalised cases, as well as the importance of collaborating efficiently with high-tech companies. Lastly, they emphasised the urgency of integrating green arbitration initiatives, diversity policies, and the need to balance confidentiality and transparency.

The second session focused on the evolving arbitration landscape in the Americas and Europe, considering geopolitical shifts and regulatory changes. The discussion emphasised institutional innovations, enforcement strategies, and emerging trends in cross-border dispute resolution. Moderator Mr Vagenheim opened by asking the panelists about legitimacy issues, particularly concerning opportunities to challenge arbitrators during arbitration proceedings. The panelists underscored the importance of arbitrators proactively disclosing potential conflicts of interest and the challenge of balancing transparency with confidentiality. Mr Nash highlighted that the LCIA's practice of publishing decisions on challenges has increased accessibility and trust in arbitration. Mr Fessas, however, stressed the need for arbitrators to explain their reasoning to the parties, while still safeguarding confidentiality. A key point raised was the importance of providing clarity to parties as to why claims fail, which strengthens the credibility of both the arbitrator and the arbitration process. In this regard, Mr Neelakantan emphasised the need for inter-institutional coordination, advocating for consistent methodologies and collective tracking to improve transparency and efficiency in the arbitration process. Panelists underlined the importance of reaching a common understanding among institutions through shared criteria, language, and statistical bases for arbitrator appointments. They also highlighted the role of Jus Mundi in comparing institutional practices, thereby helping to reconcile the need for transparency with the principle of confidentiality.

Following the session, Mr de Maistre officially signed a series of new partnerships with several major arbitration institutions, bringing Jus Mundi's network to over 100 partners. These include a partnership with the HKIAC to provide free access to case digests, with the ACICA to promote the global exchange of arbitration knowledge, and with the AIFC Court to make non-confidential arbitration awards and court judgments publicly accessible worldwide.

The third session focused on how arbitration institutions adapt to global challenges, enhance their regional influence, and shape the international dispute resolution landscape. The moderator opened with a question on innovative practices and regional insights from each centre. Ms Banda spoke first. She explained that building an arbitration centre goes hand in hand with building the practice of arbitration itself. She started by indicating that: "[i]*n a landscape where international arbitration is becoming increasingly saturated, it is difficult to create a unique identity, whether locally or internationally".* However, she outlined key strategies, like adaptability, contextualisation of problems and solutions, learning from past experiences, leveraging regional jurisdictions, and demonstrating that emerging centres are capable and relevant. This is achieved through visibility, promoting the centre's work, and building strategic partnerships, such as with Jus Mundi.

Next, Ms Pui-Ki Ta took the floor and emphasised KCAB's independence and longstanding presence as Korea's sole arbitration institution since 1966. She highlighted innovations such as fast-track procedures for small claims (resolved within six months), enhanced enforceability mechanisms, and growing transparency efforts. Ms Bowman followed, stressing the importance of grounding arbitration in local contexts while building international visibility. She explained how engagement with the judiciary, particularly collaboration with judges and federal courts, has been vital to strengthening Australia's arbitration.

The session concluded with a discussion on sustainability and inclusion. Panelists highlighted their institutions' commitment to green arbitration, diversity, and education. For instance, the Namibian Center is actively promoting ESG topics through moot court programs, increasing female arbitrator nominations, and advancing transitional justice mechanisms in environmental and social contexts.

The symposium showcased the evolving nature of arbitral institutions and the innovative strategies they employ to address modern challenges. It also reaffirmed Jus Mundi's role in promoting transparency, sustainability, and inclusiveness in arbitration.

Finally, the event highlighted the importance of continuous innovation and the ongoing development of mechanisms to implement key strategies in international arbitration. This includes embracing new technologies, ensuring transparency and accessibility for users, upgrading online systems, and seeking solutions both within institutions and through institutional cooperation.

THE TRANSFORMATIONS OF FRENCH ARBITRATION LAW

By Marie Gauthier and Nada Abouelseoud

On Thursday, 10 April 2025, the Grand Chamber of the French Court of Cassation hosted its first event as part of the 2025 edition of Paris Arbitration Week: a symposium on the theme of the transformations of French arbitration law, inaugurated by Mr Christophe Soulard, the First President of the Court of Cassation. Two high-level roundtables were held consecutively.

The first roundtable, moderated by Ms Dominique Guihal (*Dean of the First Civil Chamber of the Court of Cassation*), addressed the transformations under the French Arbitration Law. The panel included Mr Sylvain Bollée (*Professor at Paris I Panthéon-Sorbonne*), Ms Sylvie Tréard (*Counsellor at the First Civil Chamber of the Court of Cassation*), and Mr Charles Jarrosson (*Emeritus Professor of Private Law at Paris-Panthéon-Assas and Paris I Panthéon-Sorbonne Universities*).

The second roundtable, entitled "*Modalities of the Transformation of the French Arbitration Law*", was chaired by Mr Jérôme Ortscheidt (*Special Counsel before the French State Council and the Court of Cassation*). Speakers included Ms Valérie Delnaud (*Director of the Civil Affairs and the Seals Directorate at the Ministry of Justice*), Mr Renaud Salomon (*Special Counsel before the Court of Cassation*), Mr François Ancel (*Counsellor before the First Civil Chamber of the Court of Cassation*), and Mr Thomas Clay (*Professor at Paris-Panthéon-Assas and Paris I Panthéon-Sorbonne Universities*).

The conference opened with a historical overview, highlighting the landmark *Prunier* decision of 10 July 1843, which raised the issue of the validity of the arbitration clause. This judgment marked the beginning of a lengthy period, nearly 80 years, during which such clauses were excluded from positive law. It was not until the 20th century that arbitration experienced a major jurisprudential revival, notably with the *Gosset* decision of 7 May 1963, which recognised the autonomy of the arbitration clause, and the *Galakis* decision of 2 May 1966, which allowed public legal entities to resort to arbitration.

The first roundtable focused on the evolving nature of French arbitration law, raising the question of whether arbitration remains the most appropriate method for resolving disputes. The speakers noted that while French arbitration law is amongst the most liberal worldwide, certain deficiencies and tensions persist, particularly regarding procedural safeguards.

Mr Bollée emphasised two fundamental characteristics of French arbitration law: first, the existence of an arbitration-friendly legal framework, both in domestic and international contexts; and second, the specific legal techniques that support this framework. He notably referred to the favourable treatment of foreign arbitral awards and the flexibility of French law concerning the seat of arbitration, which is not restricted to national territory.

Next, Ms Tréard focused her presentation on party autonomy, the cornerstone element of arbitration. She identified three key stages expressing party autonomy, namely at the conclusion of the arbitration agreement, during the arbitral proceedings, and at the enforcement stage.

Further, Mr Jarrosson explored the precedents' contribution to the development of substantive rules in private international law. Referring to the concept of the "*Lex Mercatoria*", he demonstrated how certain rules may apply directly to international disputes without resorting to traditional conflict of laws rules. He emphasised the flexibility and autonomy of these norms while acknowledging their limitations, including vague formulation and the need for interpretation in good faith and in accordance with the expectations of the parties.

The second round table provided an opportunity to discuss the modalities of the transformation of the French arbitration law. Ms Delnaud opened the discussion by examining the role of the legislator, in a broad sense, by posing two preliminary questions: why legislate, and how? She insisted that it is essential to strike a balance between party autonomy, which creates consent to arbitration, and procedural guarantees of judicial adjudication. To this end, the legislator has intervened in three respects within French arbitration law: first, by defining the scope of arbitrability, whereby parties may not arbitrate disputes involving non-disposable rights (as per the Law of 5 July 1972) or matters concerning public order. Then, by codifying the fundamental guarantees of adjudicatory procedures (*e.g.*, the adversarial principle, the independence and impartiality of arbitrators). Finally, the legislator plays a role in modernising the law to preserve its attractiveness. The "*Attractiveness Law*" of 23 June 2024, and the ongoing project to reform the French arbitration law, are part of this strategy.

Mr Salomon and Mr Ancel then highlighted the role of the Court of Cassation in the transformation of the French arbitration law. Mr Salomon highlighted the unique contribution of the Advocate General at the Court of Cassation, an exclusively French practice. Like the *rapporteur public* before the State Council, the Advocate General, as a magistrate, shares his or her expertise and delivers an independent opinion on the case without participating in the adjudication.

Mr Ancel explained the dual historical mission of the Court of Cassation: both curative and normative. The initial legislative neglect of arbitration and an active dialogue with academia enabled the Court of Cassation to play a leading role in shaping the French arbitration law. However, this judicial leadership has since been challenged: first, by the increasing involvement of legislative and regulatory authorities since the 1980 and 2011 decrees, and second, by the emergence of international and European legal orders.

Concluding the roundtable, Mr Clay discussed the contributions of academic scholarship, comparative law, and arbitral precedents to the development of French arbitration law, ranking them in terms of their significance. Doctrine has consistently served as a driving force in arbitration law. Through major treatises and scholarly articles, theoretical developments have found their way into positive law. This presupposes a strong and committed academic community exercising its academic freedom. Dialogue between judges and legal commentators has fostered synergies that gave rise to major decisions, such as the *NIOC* ruling (2005), which recognised the concept of denial of justice. Finally, academic scholarship also plays a consultative role in the transformation of positive law, often advising political and regulatory authorities. The contribution of comparative law remains limited, given the widespread harmonisation of arbitration law. Even more marginal is the influence of arbitral precedents.

To conclude the symposium, Ms Carole Champalaune, President of the First Civil Chamber of the Court of Cassation, highlighted the historical evolution of the French arbitration law: from its ontological distrust 180 years ago, when it was seen as a competitor to the state judiciary, arbitration has now become an efficient and legitimate dispute resolution mechanism.

CORPORATE LAW DISPUTES IN ARBITRATION: HOW TO UNRAVEL THE PUZZLE?

By Delphine Fiedler

On Thursday, 10 April 2025, during the 2025 edition of Paris Arbitration Week, Loyens & Loeff hosted an interactive roundtable on comparative developments in international arbitration, with a particular emphasis on arbitrating corporate law disputes. The event brought together leading practitioners from across the law firm: Mr Robin Moser (*Partner in Zurich*); Mr Bastiaan Kemp (*Partner in Amsterdam and Professor at Maastricht University*); Mr Olivier Van der Haegen (*Partner in Brussels*), who also moderated the discussion; Ms Véronique Hoffeld (*Partner in Luxembourg*); and Mr Tom Claassens (*Partner based in both Amsterdam and Rotterdam*). Joining the roundtable as guest speakers and experts in the field were Ms Emily Fox (*Partner at Herbert Smith Freehills in Paris, Avocate à la Cour and Solicitor of England and Wales*), and Mr Christian Borris (*Founding Partner of Borris Hennecke Kneisel in Cologne*).

Mr Kemp introduced the concept of corporate law disputes and refined the scope of the discussion. He clarified that while the term could encompass a wide range of issues, including post-M&A disputes, the focus would be specifically on disputes related to corporate governance. He explained that the definition of corporate disputes varies depending on the jurisdiction. For instance, Germany typically has a narrower definition, often focusing on the validity of corporate resolutions, whereas the Netherlands adopts a broader definition, including matters such as the division of powers, behaviour of corporate bodies, and actions by minority shareholders. Nonetheless, all agreed that arbitration and corporate disputes do not always align well due to several challenges, including issues of arbitrability and the complexity of multiparty arbitration. These difficulties have led to the establishment of specific institutional rules in Germany and Switzerland, as well as ongoing initiatives in the Netherlands.

Mr Borris first addressed the arbitrability of corporate disputes in Germany, concentrating on conflicts over internal organisational structure of a corporation, particularly the validity of shareholders' resolutions. These resolutions are widely used by German corporations for important decisions, which may give rise to numerous potential disputes (over the proper convening of shareholders' meetings, conflicts of interest affecting voting rights, or violations of the company's by-laws). Mr Borris explained that arbitration has become a popular method for resolving disputes due to its confidentiality, speed, and the commercial acumen of arbitrators. However, challenges to shareholders' resolutions are typically brought by a single shareholder suing the corporation. Therefore, the prevailing view was that these matters were not arbitrable, as any decision on the validity or invalidity of a resolution must bind all shareholders. This discrepancy led to a restrictive stance by the German Federal Supreme Court over the years.

A pivotal shift occurred in 2009, with the landmark *Arbitrability II* decision by the German Federal Supreme Court. In this ruling, the Court confirmed that these disputes are arbitrable, provided that specific conditions are met to ensure the same procedural guarantees as in court proceedings, particularly with respect to rights of intervention. The Court outlined four key requirements. First, all shareholders must be parties to the arbitration agreement. Second, the agreement must grant all shareholders the opportunity to participate in the arbitral proceedings, though they are not obligated to do so. Even if they choose not to participate, they remain bound by the outcome of the arbitration. Third, any shareholders who will be bound by the award must also have the right to take part in the constitution of the arbitral tribunal. Finally, parallel proceedings against the same shareholders should be avoided.

Ms Fox turned to the question of arbitrability under English law, where corporate disputes are generally understood as matters of corporate governance. However, case law in this area remains relatively sparse. She listed three principal categories of corporate disputes typically encountered: claims of unfair prejudice, such as when a director has acted in a manner detrimental to the interests of the shareholders; claims for the rectification of administrative or status-related transactions; and insolvency proceedings, which are generally considered non-arbitrable. English courts adopt a pragmatic, case-by-case approach to arbitrability. When determining whether a dispute can be arbitrated, they consider relevant factors, such as whether the Companies Act explicitly provides for the courts' jurisdiction. Ms Fox explained that the main consideration is the nature of the relief sought. Some remedies can be granted by arbitrators, while others, particularly those involving public policy, fall outside their powers.

Mr Moser provided insight into the Swiss approach, noting a particularly broad understanding of arbitrability, with legislators establishing a provision in the Code of Obligations that allows the articles of association to specify that all corporate law related disputes are subject to arbitration. The law explicitly states that, unless the articles provide otherwise, the arbitration clause binds the company, all its organs, directors, officers, and shareholders. Some consider it to be overly broad. While these issues are theoretically arbitrable, Mr Moser pointed out that certain matters, such as challenges to the convocation of a shareholders' meeting, may not be ideal for arbitration, as the time needed to obtain and enforce an arbitral award could undermine the remedy's effectiveness. This wide range of arbitration options for corporate matters has primarily been used by multinational enterprises as a strategic tool to discourage hostile and activist shareholders.

Ms Fox then opened the discussion on the second major topic: the multiparty nature of corporate dispute arbitration and its *erga omnes* effect. Under English law, only parties who have expressly agreed to arbitrate can be bound by an arbitration agreement, even in corporate disputes involving multiple stakeholders. By contrast, Ms Fox noted that the French approach is considered more liberal, notably due to the group of companies' doctrine, which may allow an arbitration agreement signed by one company to extend to other entities within the same corporate group, especially if they were involved in the negotiation or performance of the contract. However, the situation becomes significantly more complex in the context of corporate governance disputes, where the legal personalities of parent and subsidiary companies can become blurred. Even so, they are normally treated as distinct parties, each acting in its own legal capacity.

Ms Fox illustrated her point with the case *Fulham Football Club (1987) Ltd v. Richards*, where an unfair prejudice claim was brought under the articles of association. In that dispute, one individual acted as both shareholder and chairman, but under English law, this duality did not allow the arbitration agreement to automatically extend between capacities. The principle of consent remained paramount: being bound as a shareholder did not entail being bound in the separate capacity of a chairman. The court also held that the potential effect on third parties did not affect the arbitrability of the dispute, as arbitrators could, in principle, invite third parties to express their views during the proceedings. Ms Fox, however, pointed out that there is no obligation for arbitrators to do so, and even if a third party is heard, the tribunal may not take their position into account in rendering its award.

According to Mr Borris, Germany takes a stricter approach to multiparty arbitration, more closely aligned with English law, particularly concerning the applicability of the group of companies' doctrine. The German Supreme Court's referenced decision led to the development of a model clause, which can be included in a company's articles of association, to address technical challenges in enabling all shareholders to participate in selecting the arbitral tribunal. Given the complexity of incorporating all necessary details into a single clause, the German Arbitration Institute's (DIS) Supplementary Rules for Third-Party Notices were introduced. These rules ensure affected parties are properly informed and invited to participate and are now referenced in the model clause.

When a shareholder challenges a resolution, their Request for Arbitration must list all impacted shareholders, who are then notified and invited to participate, with deadlines to decide whether to intervene and which side to support. If the parties cannot agree on an arbitrator, the DIS appoints co-arbitrators, who then select the tribunal president. Mr Borris has noted ongoing discussions about making this process more flexible. In line with the Supreme Court's decision, the new rules also address parallel proceedings by requiring that later proceedings be consolidated with the first. Ultimately, the DIS Rules aim to enhance the legitimacy of arbitration outcomes for third parties.

In closing remarks, Mr Moser outlined the Swiss Arbitration Association's distinct framework for handling corporate law disputes, which emphasises both flexibility and broad applicability. A notable distinction from the German Rules is that the Swiss Rules do not require shareholders to be proactively invited to join in the arbitration process. Instead, they only mandate that shareholders be informed of the proceedings. In smaller private companies, this typically involves direct notification, whereas in larger public companies, notice is usually provided through a publication indicating that an arbitration is ongoing. Finally, Mr Moser highlighted that under the Swiss Rules, arbitrators must be approved by the Swiss Arbitration Centre. If the parties are unable to agree on the selection, the institution will appoint the arbitrators.

FRAUD AND ARBITRATION: A VIEW FROM ENGLAND AND FRANCE

By Nina Bondiau

On Thursday 10 April 2025, as part of Paris Arbitration Week 2025, 39 Essex Chambers organised a conference on the treatment of fraud and corruption in arbitration under French and English law. The panel, moderated by Mr Peter Turner KC (*Barrister at 39 Essex Chambers*), featured Ms Shaistah Akhtar (*Partner at Mishcon de Reya*), Mr Andrew Durant (*Senior Managing Director at FTI Consulting*) and Mr Christophe Seraglini (*Partner at Freshfields and Professor of Law at the University of Paris-Saclay*).

Mr Turner opened the debates by emphasising that, while there is a consensus among practitioners on the condemnation of fraud and corruption, these phenomena nevertheless raise complex legal questions, the answers to which vary considerably between France and England. Two types of illegal behaviour can be identified: fraud during the formation of the contract, and procedural fraud during the arbitration (bribery of the other party's employees or arbitrators, withholding of documents and false testimony).

To illustrate the issues underlying this problem, *Nigeria v. P&ID* was chosen as a textbook case. It revealed that an award (granted by a renowned tribunal) had been obtained through fraud and corruption, manoeuvres that continued during the arbitration proceedings.

Ms Akhtar represented the Nigerian government and secured the annulment of an award worth 11 billion dollars (interests included). As the contract between Nigeria and P&ID included an arbitration clause specifying that the arbitration will be based in London, where the entire procedure took place, an award was issued in 2017.

Following an in-depth investigation by the Nigerian government concluding in 2019 and after the award had already been made, serious evidence of fraud was discovered (corruption of government officials and ministers) both prior to the conclusion of the contract, and during the arbitration proceedings. Under the English Arbitration Act, the English procedure allows only 28 days to challenge an arbitration award, with a success rate of only 4%. Although this period can be extended by a few weeks, no previous case had allowed such a significant extension.

Ms Akhtar thus faced a twofold challenge: firstly, she had to succeed in obtaining an extension to challenge the award, and secondly, she had to have the award set aside.

In September 2020, the High Court of Justice of England and Wales granted an extension of time and a waiver of the sanctions and in 2023, following the submission of evidence related to corruption and fraud, the award was subsequently annulled in its entirety.

Mr Durant, was responsible for the identification and presentation of evidence pertaining to fraud and corruption, with the objective of ensuring its admissibility before an English court of law. He was able to easily trace the cash payments made to the various agents, and a trip to Nigeria for investigative purposes enabled him and his team to discover more than 6,000 documents establishing the corruption attributable to P&ID. Ms Akhtar highlighted that, in the *Nigeria v P&ID* case, the request for an extension was made despite the absence of all the evidence available at that stage of the proceedings, thus demonstrating the relevance of expedient disclosure of allegations as soon as they can be at least minimally established.

In the absence of a discovery procedure under French law, Professor Seraglini was asked to comment on the position a French judge would have adopted in such a context. He referred to the *Alstom* case, one of the rare examples - regrettably, he added - where the judge had used their power to order the production of documents to establish corruption.

He further recounted a recent reversal by the Court of appeal in 2023 in the Hisense case, which declared the production of illegally obtained evidence to be admissible in cases of corruption, enabling such manoeuvres to be established. In this context, Mr Turner questioned the differing standards of proof in corruption cases between arbitration in France and the Paris Court of Appeal.

Professor Seraglini indicated that in France, an arbitral tribunal is independent and not bound by French procedural law, principally because the main reason for this is that the Court of Appeal will always follow its own reasoning, independently to that of the arbitral tribunal.

As a result, and for greater certainty in their decisions, some arbitrators prefer to align themselves directly with the standards of proof, i.e. serious, precise and concordant presumptions, as well as the technique of red flags, recently adopted by the Court of Appeal. He regrets, however, that the absence of strict criteria leaves judges with a wide margin of appreciation, generating uncertainty in the case law.

Further enquiring on the standards of proof in the event of an action for annulment, Mr Turner asked Ms Akhtar to comment on the need to show that the fraud was decisive on the outcome of the arbitration. She recalled that in *Nigeria v Pc&ID*, the award was set aside based on corruption leading to false testimony. The English court's position on this matter is limpid: If the tribunal had been aware of the concealed evidence, there is a strong likelihood that it would have reached a different decision, the award must therefore be set aside. In France, adds Prof Seraglini, the reasoning is similar. In the event of an annulment appeal after the facts of corruption have been established (through testimony, expert reports or a criminal ruling), the Court of Appeal assesses whether these facts had a decisive influence on the award - provided that the arbitral tribunal itself has previously acknowledged this potential influence.

Finally, Mr Turner recalled that Judge Robin Knowles had been struck by the ease with which the claimant had obtained such a substantial award – considering the ease with which FTI had been able to gather evidence of the bribery. From this observation, the judge drew a number of recommendations to prevent such abuses.

The notion of a standard form of contract shared by leading law firms was met with a mixed reception; however, Ms Akhtar acknowledged some merit in it. The judge's second proposal, which stipulates that arbitrators must suggest that a party change counsel in the event of a manifest imbalance, was met with a greater degree of scepticism. This proposal was deemed to be viable by none of the parties, apart from exceptional circumstances.

The issue of confidentiality in arbitrations involving a state was also raised: could greater transparency help to offset attempts at corruption? All agreed on the complexity of the issue thanks to the confidentiality inherent in the arbitration procedure. Ms Akhtar agreed with Prof Seraglini that arbitrators should be sceptical given the scope of their powers but cannot break confidentiality on the sole grounds of corruption or use the English Arbitration Act (or any other text) to justify such practices.

In essence, there is a consensus that the price of confidentiality is often the inability to effectively challenge a privatised process. In such cases, while the UK appears to offer more guarantees, France favours procedural freedom.

THE NEXT PHASE OF INCLUSION: ACTIONABLE INSIGHTS FROM THE LCIA EDI GUIDELINES

By Saskia Dodds

As part of Paris Arbitration Week 2025, Fladgate LLP hosted a conference about Equality, Diversity and Inclusion ("EDI") on Thursday 10 April, 2025, at 12:30. The panel was graciously moderated by Mr Thomas Karalis (*Partner at Fladgate LLP*), and included Ms Kate Corby (*Partner in Dispute Resolution at Baker McKenzie*), Mr Kevin Nash (*Director General of the London Court of International Arbitration* ("LCIA")), Ms Tope Adeyemi (*Barrister at 33 Bedford Row and Chair of the London branch of the Chartered Institute of Arbitrators* ("Ciarb")), and Mr Al-Karim Makhani (*Vice-President of TransPerfect Legal*).

After a pleasant buffet and 30 minutes of networking between participants and panelists, Mr Karalis began the conference by introducing the panelists, the topic and the LCIA EDI Guidelines for International Arbitration. Mr Karalis simultaneously underlined the importance of diversity in the business world, as well as its essential role in ensuring the legitimacy of arbitration proceedings. Diversity was presented as a fundamental aspect of an efficient and fair decision-making process.

Mr Karalis then asked a series of questions to the panelists, starting with the first: how can technology make arbitration more accessible? Mr Makhani responded by asking participants to scan the QR code projected on the screen to access a real-time transcript enabling them to follow the conference live in a multitude of languages. He explained that technology adapts to obstacles and provides a degree of flexibility to suit any need. However, although technology is advanced, it is not without fault, as the results are not 100% correct and sometimes there are time lags. Mr Karalis then asked Ms Adeyemi how the LCIA EDI Guidelines prove to be a useful tool. Using section I(2) of the Guidelines on candidate identification as an example, Ms Adeyemi stated that the Guidelines codify the fundamentals of good practice, are clear and simple, and provide examples and explanations for terms with multiple meanings. In short, according to Ms Adeyemi, the Guidelines offer a good starting point by creating a framework of active steps to take.

On the specific subject of EDI in arbitration, Mr Karalis first asked Mr Nash about how the Guidelines fit within the LCIA framework. Mr Nash pointed out that the LCIA, by publishing this resource, is setting a very good example for other institutions that may be reluctant to introduce their own rules on this subject. Internally, the LCIA has achieved gender parity in its appointments of arbitrators and seeks to be an institution that is representative of its users more broadly. Mr Karalis then asked Ms Corby: how, within her team, does she manage to strike a balance between the needs of her clients and EDI? Ms Corby responded by explaining that a team's performance improves with diversity, whether it's diversity of experience, culture or thought. Ms Corby considered the Guidelines to be a document that contains both the theory and practice of EDI, as well as concrete objectives that she seeks to achieve each time she puts together a team for her cases.

When Mr Karalis introduced the subject of bias in arbitration, Ms Adeyemi opened the discussion by stating that everyone is susceptible to bias whether consciously or unconsciously, therefore making it the responsibility of arbitrators to be aware of this possibility, to incorporate inclusive acts and to undertake training courses on unconscious bias. An aspect in which Ms Adeyemi felt that the Guidelines could have been more explicit in regards to assessing the credibility of a witness, as there is an inherent risk of placing too much importance on witnesses' demeanor, communication style or body language, which are all influenced by culture.

On the implementation of the Guidelines, Ms Corby established that it is first necessary to identify counsel, experts and arbitrators, for whom there are searchable lists online. Then the Guidelines must be taken into consideration in the arbitration procedure, particularly with regard to accessible hearing locations, disabilities and language, as well as conscious and unconscious bias. She stressed that it was also important to promote the Guidelines so that they could be applied by the parties in their arbitration. On this last point, Ms Corby asked Mr Makhani about his experience in the tech world in order to determine whether he sees technological solutions as being sought out by the parties or rather solely endorsed by start-ups. In response, Mr Makhani asserted that typically clients do not seek out technological solutions on their own and that rather it is up to counsel and legal tech companies to make their clients aware of the existence, importance and benefits of these new tools.

Finally, Mr Karalis asked Mr Nash how the LCIA collects and processes EDI data. Mr Nash responded that the difficulty with EDI is that everyone wants it, but only when it's someone else's case. He acknowledged the challenges around measuring the impact of inclusion but suggested that data and AI could support a more equitable arbitrator selection process. Change doesn't happen overnight, and that's why, according to Mr Nash, the LCIA is already well equipped to implement EDI, having already a long list of arbitrators that has improved, expanded and diversified over time.

The conference ended with a short Q&A session to answer questions from the audience, which featured debates about the challenging environment EDI currently faces and discussions about the best methods to drive accountability.

Having interviewed Ms Corby and Mr Nash, it was clear that the LCIA EDI Guidelines, being the first of their kind, need to be promoted in order to demonstrate to other arbitral stakeholders around the world that it is possible, necessary, and beneficial for international arbitration to put in place flexible and non-mandatory rules on EDI.

ARBITRATORS' DISCRETION IN AWARDING COSTS: ARE THERE ANY LIMITS?

By Kanchan Sharma

In the event of Paris Arbitration Week, on Thursday, 10 April 2025, Aceris Law organised an online webinar entitled "*Arbitrators' Discretion in Awarding Costs: Are there Any Limits?*". The panel explored how arbitrators approach the awarding of costs and the limits of their discretionary powers in this regard. The panel was moderated by Ms Nina Jankovic (*Senior Associate at Aceris Law*), and featured an esteemed group of international arbitrators: Ms Anne K. Hoffmann (*Independent Arbitrator based in Dubai*), Ms Nina Lauber-Thommesen (*Independent Arbitrator based in Geneva*), Mr Brooks Daly (*Independent Arbitrator based in the Hague*), and Mr William Kirtley (*Managing Partner at Aceris Law*).

The panel began by examining the legal framework applicable to the allocation of costs in international arbitration. Ms Hoffmann explained that the starting point for determining costs is the arbitration agreement. The substantive law governing the contract plays a lesser role unless explicitly raised by the parties. Jurisprudence is also important in jurisdictions where cost-related issues have been frequently addressed by the courts. Arbitrators do not operate in a vacuum when determining costs.

Mr Daly then discussed whether arbitrators should use a structured legal analysis or maintain flexibility. He emphasised that most procedural rules grant arbitrators broad discretion, and parties do not expect detailed legal reasoning when it comes to an award on costs. Arbitrators should have a starting point, for example, the "*loser-pays-all*" rule under the United Nations Commission on International Trade Law ("UNCITRAL") arbitration rules, and assess if deviation would be justified. Ms Lauber-Thommesen explained that in the vacuum of institutional rules or party agreements on cost allocation, arbitrators usually follow international arbitration standards. However, national laws may be considered if the parties are from jurisdictions providing for strict cost-related provisions.

Ms Lauber-Thommesen noted that party conduct is often taken into account in cost allocation, either required by institutional rules or when raised by the parties. If the rules are silent, arbitrators should be careful, particularly when the parties come from jurisdictions where this is uncommon. To manage expectations and ensure fair proceedings, early transparency regarding conduct should be considered. Mr Kirtley further discussed how party misconduct, like bad faith tactics or procedural delays, can influence cost awards. Since the adoption of the 2012 International Chamber of Commerce ("ICC") rules, tribunals have increasingly used cost decisions to sanction poor behaviour, even that of a winning party. He shared examples where costs were reduced as a result of inflated claims or obstructive tactics, highlighting the role of cost allocation in deterring misconduct.

Ms Hoffmann emphasised the importance of party conduct in cost allocation, reflecting on her own practice whereby she includes a clause addressing this issue in Procedural Order No. 1 to set expectations from the outset. She also observed that tribunals are now more open to consider party conduct when allocating costs. Mr Daly added that including party conduct in procedural orders is more about ensuring fairness than incentivising good behaviour. He further noted that tribunals that take a proactive approach tend to manage any misconduct more effectively.

Regarding the "*loser-pays-all*" principle, the panel noted that determining the successful party isn't always straightforward. Ms Hoffmann explained that arbitration often involves multiple issues, such as jurisdiction or declaratory relief, which affects cost allocation. She equally noted that non-monetary successes, like declaratory relief, should factor into cost decisions. A detailed analysis is thus necessary, rather than simply awarding costs based on a numerical outcome.

Ms Lauber-Thommesen explained that civil law countries, such as Germany, typically use proportional cost allocation based on success, whereas England follows a "*winner-takes-all*" approach. She further noted that Nordic countries, despite their civil law tradition, tend to favour the "*winner-takes-all*" method. Data from the Stockholm Chamber of Commerce shows that the "*winner-takes-all*" principle generally prevails, although international cases often apply a relative success approach. In practice, tribunals typically follow a two-step process: first, they assess the reasonableness of the costs claimed and the degree of success, and then, they consider the parties' procedural conduct to determine any necessary adjustments.

Highlighting key factors arbitrators consider when determining costs, including hourly rates, seniority of fee earners, and specialisation, Mr Kirtley noted that while higher fees may be justified for expertise, using them to justify excessive charges for tasks like editing footnotes is questionable. Disparities in legal fees between parties are usually scrutinised, especially if one party's costs are considerably higher than the other. Proportionality is important, with arbitrators considering the complexity of the dispute and any conduct that inflated costs. For example, in a case conducted under the UNCITRAL rules, the tribunal ruled that both parties should bear their own costs, as the respondent's legal fees were six times the amount in dispute. Ms Lauber-Thommesen noted that when one party's costs are unusually high, arbitrators ask for a breakdown of expenses. Imbalances aren't always unreasonable, but arbitrators should only scrutinise costs if they are clearly excessive.

The panel then discussed how arbitral institutions assist arbitrators in awarding costs by reviewing fee calculations. For example, Mr Daly noted that the ICC Secretariat scrutinises costs, while the PCA reviews the draft award.

Turning to the debate over whether a funded party can recover its full costs, including the funder's success fee, Ms Lauber-Thommesen emphasised that arbitrators should have discretion, as they are best placed to assess the specificities of the case. Third-party funding costs fall into two categories: first, the legal and arbitration costs, which may be recoverable if the funded party is contractually obligated to repay them, and the costs of obtaining funding (i.e., success fees), which are generally not recoverable, except in specific circumstances.

Ms Lauber-Thommesen noted that arbitrators' discretionary powers are limited by the mandatory laws of the seat and enforcement jurisdiction. National laws typically influence decisions, and arbitrators are required to justify cost awards to ensure enforceability. In Nordic countries, for instance, laws grant discretion to allocate costs, but enforcement courts can still scrutinise fees.

The discussion then turned to cost awards in jurisdictions where the legal framework remains unclear, particularly in the Middle East. Ms Hoffmann highlighted challenges under the previous Dubai International Arbitration Centre ("DIAC") rules, which did not empower tribunals to award legal fees, often resulting in the annulment of awards. She noted that the new DIAC rules now include such provisions, and recent court decisions have begun to address and clarify past misinterpretations.

In response to a question about the influence of precedents on cost awards, Ms Lauber-Thommesen explained that while court precedents may limit a tribunal's discretion, cost awards rendered by other tribunals may be relevant if they help clarify the applicable criteria within the same jurisdiction or under similar circumstances.

In their concluding remarks, Mr Kirtley emphasised that the *lex arbitri* should take priority when arbitral tribunals allocate costs, ensuring compliance with procedural rules and minimising the risk of the award being set aside.

THE DISCLOSURE DILEMMA: MUST WE REVEAL EVERY MEAL?

By Lea Maalouf

On a sunny Thursday afternoon, 10 April 2025, it was a full house at Simmons & Simmons' Paris office, as participants gathered for a conference organised as part of the 9th edition of Paris Arbitration Week ("PAW") on the topic of disclosures in international arbitration, with a particular emphasis on the evolution of practice in light of the IBA Guidelines on Conflicts of Interest in International Arbitration ("IBA Guidelines"). The panel, moderated by Mr Philippe Cavalieros (*Partner and Global co-head of Simmons & Simmons' international arbitration practice*), featured two leading experts who have shaped the IBA Guidelines influencing the framework of disclosure, Professor Bernard Hanotiau (*Founding Partner of Hanotiau & Van Den Berg*) and Ms Erica Stein (*Independent arbitrator at Stein Arbitration*). As the panel delved into the intricacies of disclosure practices, one question lay at the heart of the lively and interactive discussion: In the close-knit world of international arbitration, where professional paths crisscross and familiar faces are a constant, where do we draw the line between what should be disclosed and what should not?

In his introductory remarks, Mr Cavalieros revealed that the International Chamber of Commerce ("ICC") had announced at the beginning of PAW that the total amount in dispute of all current arbitrations administered under the ICC rules has reached 354 billion USD. This hints at the obvious reality: arbitration is no longer what it used to be. There is an inevitable need for regulation and the implementation of certain safeguards to address the significant shift in the arbitration market, which has become more contentious by the day. Mr Cavalieros reminded the audience of how the IBA Guidelines on Conflicts of Interest, adopted in 2004, have been instrumental in addressing emerging challenges, particularly those related to the standards of impartiality and independence, and in defining the ethical framework within which arbitrators (are expected to) operate. He then presented the distinguished guest speakers: Prof Hanotiau, a key architect of the 2004 IBA Guidelines and the driving force behind their first revision in 2014, and Ms Stein, Chair of the 2024 Review Task Force for the Revision of the 2014 version of the Guidelines.

Mr Cavalieros recalled that the IBA Guidelines are divided into two parts: Part I, the "*General Standards Regarding Impartiality, Independence, and Disclosure*", sets forth the general principles governing issues of impartiality, independence, conflict, disclosure, relationships, and duties of all parties involved in an arbitration, and Part II, the "*Practical Application of the General Standards*", consists of a non-exhaustive list of various circumstances, which commonly arise or have previously been identified in practice, illustrating the General Standards in a "*Traffic Light System*" – the red (non-waivable and waivable), orange, and green lists.

Against this backdrop, Mr Cavalieros kickstarted the discussion by asking: How do Part I and Part II of the IBA Guidelines interact? Ms Stein explained that arbitrators should rely on the General Standards contained in Part I to guide themselves when determining whether they should accept or decline an appointment, refuse to continue to act as an arbitrator, or disclose a fact or circumstance existing prior to or learned after accepting their appointment. Simply put, Part I constitutes general principles, which require arbitrators to carry out a conscientious exercise and think critically about the facts and circumstances present before them. Ms Stein stressed that there is no "*one rule*" in this regard; therefore, arbitrators should evaluate the facts and circumstances holistically in light of the General Standards. As for Part II, the traffic light lists are not and should not be viewed as the "*first and last stop*" when determining whether or not a conflict of interest exists, or whether an arbitrator is required to disclose a fact or circumstance. She unequivocally clarified that the traffic light system merely offers a set of illustrative examples, primarily intended to assist and orient arbitrators, particularly in understanding the limits and recognising situations that necessitate disclosure under the applicable General Standards. Accordingly, the interaction between Part I (considered important) and Part II (considered less important) comes down to the former providing the fundamental principles that shall be respected while the latter providing examples to illustrate these principles. Thereupon, albeit distinct, both parts are intertwined and should always be read together.

Ms Stein then walked the audience through some of the key changes to the General Standards under the 2024 revision of the Guidelines. For instance, General Standard 4 pertaining to waiver by the parties, now specifies that a waiver takes into account whether reasonable inquiries using publicly available information could have enabled the parties to identify any relevant facts or circumstances at the outset or during the proceedings, thereby placing a duty of curiosity on the parties. General Standard 6 defining relationships has been broadened to include a top-down approach, meaning that the top entity should also be considered to be imputed to the bottom entity for conflict purposes. Lastly, General Standard 7 pertaining to the duty to inform, has been expanded to require parties to come forward with any relevant information on entities related to the dispute and, more precisely, specify the nature of their relationship to the actual dispute. Ms Stein noted that the overall changes were not massive, but they enhanced clarity in the standards to reflect and incorporate the expressed views of the global arbitration community.

The floor was then given to Prof Hanotiau, who commented on the evolution of disclosure practices over the last 20 years in relation to the IBA Guidelines. Reflecting on the early years of his career, he pointed out that when he began practising arbitration in 1978, the pool of arbitrators was very limited and confidence in their impartiality was common. Today, however, suspicion prevails, as illustrated by a recent investment arbitration case where it took two years to select a chair arbitrator, demonstrating how the disclosure process can impact the constitution of an arbitral tribunal. He touched upon the influence of U.S. practices, where party-appointed arbitrators were traditionally expected to advocate for their appointing parties – for instance, the American Arbitration Association rules still utilise the term "*neutral*", requiring "*neutral arbitrators*" to be impartial. Prof Hanotiau depicted the general transformation in the approach to disclosures as a "*problem of generation*", suggesting that while the change in attitudes across generations has impacted current practices, it may, in certain situations, be perceived as exaggerating the need for extra caution.

Subsequently, Mr Cavalieros resumed the floor, structuring the second part of the discussion around a series of questions. First, he indicated that the IBA Guidelines contain both objective (in the view of a reasonable third person) and subjective (in the "*eyes*" of the parties) tests, whereby the former applies to challenges and the latter to disclosure. The concern was whether these tests are in line with the tests applied under the major institutional rules, such as the ICC arbitration rules. Ms Stein highlighted that what truly matters in this regard is the norm of practice among arbitrators and the expectations of the parties at the disclosure stage, which remains subjective.

Mr Cavalieros then turned to a question on issue conflicts – accounted for under the Orange list in two circumstances: 3.1.5 and 3.4.2 – where the panellists' input was sought to examine whether issue conflicts are deemed to be less problematic than interpersonal conflicts. Ms Stein firmly disagreed, clarifying that any sort of conflict or circumstance giving rise to doubts as to the arbitrator's impartiality or independence must be assessed on a case-by-case basis. She elaborated that it was impossible to include in the traffic light lists all types of issue conflicts that may arise in practice, and it is therefore incumbent upon the arbitrator to properly examine whether an issue conflict exists in the case at hand.

The panellists then discussed the pertinent changes to the traffic light lists, focusing in particular on the Orange list, which reflects situations that an arbitrator has a duty to disclose. Several circumstances were added to the Orange list under the 2024 revised version of the Guidelines, which, depending on the specific facts of a case, may, in the eyes of the parties, give rise to doubts as to the arbitrator's impartiality or independence – paragraphs 3.1.4, 3.1.6, 3.2.9, 3.2.10, 3.2.12, 3.2.13, and 3.3.6. Ms Stein first highlighted that the Review Task Force was reluctant to introduce "*too many*" new situations to the traffic light system, to avoid creating the impression that the lists are exhaustive. Instead, they targeted specific scenarios where clarification was deemed necessary due to commonly recurring issues in practice. She confirmed that these scenarios include situations where an arbitrator has participated in mock-trials or hearing preparations with one of the parties in unrelated matters, has acted as an expert for one of the parties in a different arbitration, or has instructed an expert appearing in the current proceedings for another matter where the arbitrator acts as counsel.

Interestingly, both Ms Stein and Prof Hanotiau observed that the newly added circumstance, requiring arbitrators to disclose that they are currently sitting with a fellow arbitrator in another matter, initially caused quite a stir. Yet what once raised eyebrows has apparently become the expected norm within the arbitration community, given the subjective standard applicable to disclosures.

Equally central to the discussion was the question of close personal friendships in international arbitration. The Orange list includes circumstances where an arbitrator has a "*close personal friendship*" with a party's counsel, a party representative, a person or entity having a controlling influence on one of the parties, or a witness or expert involved in the proceedings. Mr Cavalieros pointed out that the 2004 version of the Guidelines offered a more detailed definition of a "*close personal friendship*", describing it as a relationship where an arbitrator and counsel, for instance, "*regularly spend considerable time together unrelated to professional work commitments or the activities of professional associations or social organisations*". He noted that this elaboration was dropped in both the 2014 and 2024 versions of the Guidelines, prompting the question of why that decision was made. Ultimately, Ms Stein and Prof Hanotiau explained that, while it may raise concerns, it is "*normal*" for arbitrators and counsel to form friendships over time, especially within the arbitration community. The extent of any concerns, however, hinges on the depth and intensity of each individual relationship. As a final note, the panellists agreed that the 2004 phrasing was "*too descriptive*", as the perceptions of personal connections differ among individuals, and it is more appropriate to maintain a broader definition that allows for flexibility in assessing the nature and closeness of every relationship.

The discussions continued informally over drinks at the firm's rooftop cocktail reception, offering a candid reflection on the event's insights: what began as an effort to codify what appeared to be the best practice, the IBA Guidelines have now become the very benchmark that may help resolve the disclosure dilemma.

YOUNG ICCA WORKSHOP: THE ART OF ORAL ADVOCACY

By Clara Faravel

On Thursday, 10 April 2025, as part of Paris Arbitration Week 2025, the Young International Council for Commercial Arbitration (*Young ICCA*) hosted a workshop addressing "*The Art of Oral Advocacy*".

Ms Eva Chan (*Skadden, Arps, Slate, Meagher & Flom LLP, New York*), Co-chair of Young ICCA, opened the workshop by presenting the organisation. She later presented the panel and the goal of this workshop. The workshop was structured in two main parts: firstly a mock submission on the admissibility of evidence in an arbitration proceeding by two oralists, and secondly feedback from a tribunal and an open discussion on effective oral advocacy techniques. Designed to provide practical insight and guidance, the workshop was aimed at young practitioners and students looking to sharpen their advocacy skills.

As a prelude, Ms Chan began by outlining Young ICCA's mission. Young ICCA is a leading arbitration knowledge network for young practitioners and students, functioning under the auspices of the International Council for Commercial Arbitration (ICCA). This NGO promotes the use of arbitration by introducing new practitioners from all corners of the globe to the field of international arbitration.

Ms Chan emphasised that the impact of Young ICCA is four-fold, using a combination of mentoring programs, workshops, scholarships, as well as publishing a magazine.

The Young ICCA mentoring program culminates in a three-day retreat in Paris, which Ms Chan described as the "*crown-jewel*" of the Young ICCA.

Ms Chan then emphasised that all workshops organised by Young ICCA are skill-based, aiming to develop a specific asset directly applicable to young practitioners. Ms Chan gave examples of previous workshops done by Young ICCA, such as a workshop on cross-examination in New York, one on enforcement done in Sao Paulo, one about negotiations done in Hong Kong, and one on oral advocacy in Riga.

Regarding the scholarships, Ms Chan pinpointed that Young ICCA offers three full-tuition scholarships each year from three prestigious law schools: Miami School of Law, the MIDS and Tsinghua Law School.

Lastly, she presented "*VOICES*", Young ICCA's online magazine, seeking to provide practical and current content on all things important to young arbitration practitioners.

Ms Chan then proceeded to present the five members of the panel: firstly the two oralists of the mock submission: Ms Ruxandra Irina Esanu (*Senior Associate at Wordstone, Paris*), and Mr Maanas Jain (*English-qualified barrister and Senior Associate at Paul Hastings, London*). The mock tribunal consisted of Professor Dr Mohamed Abdel Wahab (*Founding Partner & Head of International Arbitration, Zulficar & Partners Law Firm, Egypt*), Mr Peter Turner, KC (*Barrister, 39 Essex Chambers, London*), and Mr Timothy Nelson (*Partner at Skadden, Arps, Slate, Meagher & Flom LLP, New York*).

The two oralists then began their submission. The submission was inspired by a portion of the 32nd Vis Moot problem, related to the exclusion of evidence.

Ms Esanu, representing the Claimant, was arguing that the evidence contained in Exhibit R-3 had to be excluded by the Tribunal. Conversely, Mr Jain, representing the Respondent, was arguing the contrary, i.e., that the evidence contained in Exhibit R-3 had to be admitted by the Tribunal.

Claimant started out by submitting that the contentious evidence, an email belonging to Respondent, should not be admitted by the Tribunal for two reasons: firstly, it was unlawfully obtained, and secondly, it was covered by legal privilege. She pinpointed that it was unclear how Respondent had obtained that contentious document. She emphasised that the Respondent must have sourced the contentious email during the investigation and that that was inconsistent with the procedural rules set out in the arbitration clause. She concluded by stressing that it is prudent that the arbitrators do not look at the contentious evidence in Exhibit R-3, even if they had legal authority to do so.

As a response to that, Mr Jain then submitted that Claimant's application to exclude Exhibit R-3 was flawed, and submitted why Exhibit R-3 should not be excluded. He emphasised that there were no sufficient grounds to exclude the document, and that the burden was on the Claimant to prove why it should be excluded. He added that the Claimant had simply said the evidence was "*likely obtained during the investigation*" and was "*likely unlawfully obtained*", but hadn't demonstrated why.

Alternatively, Respondent submitted that irrespective of the fact that the evidence was obtained illegally, the Tribunal should give it weight. Dr Abdel Wahab, a member of the mock Tribunal then intervened and pinpointed that in order for the Tribunal to give weight to the document, it had to admit it in the first place. Alternatively Respondent submitted that irrespective of illegality, tribunal still had the power to admit that document to the record.

Claimant and Respondent then moved to the admission of Exhibit C-7, which Claimant submitted was protected by confidentiality, and Respondent submitted it wasn't. Respondent argued that Claimant couldn't shield a document from being admitted by the Tribunal simply by labeling it a certain. He further explained Exhibit C-7 was in fact not protected by confidentiality, and that wishful thinking is not sufficient.

The panel then moved on to the mock Tribunal's feedback and oral advocacy advice. Firstly, Mr Turner started by noting that Tribunals can interrupt pleadings a lot and that it is therefore very important to be able to react on your feet. Mr Nelson seconded that statement, saying that at some point of the hearing, you will go off script, it is impossible otherwise, and you have to be able to adapt and react to what the Tribunal asks. Mr Nelson suggested that oralists be crisp, clear and short when exposing their argument, as that is the best way to retain the Tribunal's attention.

Another tip for answering questions on your feet was to always seek clarification from the Tribunal, instead of giving away information. Mr Turner concurred and added that the mark of good advocacy is being impactful with your point, not your tone of voice. A pitfall that was evoked by Mr Turner was to never try to avoid an argument that is against you, and that it is a discourtesy towards the Tribunal to not address a point just because you might have a personal disdain for it. Never assume a point is so weak it shouldn't be addressed.

Ms Chan then asked each member of the Tribunal to give a piece of advice regarding oral advocacy to the young practitioners or students in the room. Dr Abdel Wahab started by advising to attune to the frequency of the Tribunal and adapt your use of language accordingly. He also suggested giving the tribunal the path to an award that they can write. As for Mr Turner, he advised that knowing your case by heart was the key to being a great pleader, and that clarity and confidence go a long way. Finally, Mr Nelson prompted the importance of crafting a story when pleading. One way that could have been done in this instance was by starting by saying that this is a prestigious tribunal, that the laws of evidence have been breached, and finishing by stating that the Tribunal has the power to fix it. He jokingly said that Tribunals always love to hear they have power over something they can fix, and presenting it that way will make them more inclined to listen to you as an oralist.

To put it in a nutshell, the key takeaway from this workshop was that preparation is truly the most important asset, and knowing your case inside and out is the secret to being a great oralist.

EARLY INSIGHTS FROM THE 2025 WHITE & CASE AND QMUL INTERNATIONAL ARBITRATION SURVEY

By Jessica Dannery

On Tuesday, 8 April 2025, White & Case LLP hosted a widely attended conference titled "*Early Insights from the 2025 White & Case and QMUL International Arbitration Survey*". This conference presented a number of key findings from the cutting-edge results from the 2025 White & Case and Queen Mary University of London ("QMUL") survey, which analyses key issues shaping the current practice and the future of arbitration. This research represents a significant partnership between White & Case and QMUL as this is the sixth survey that White & Case has sponsored with QMUL since 2010. The survey's results were presented by: Ms Clare Connellan (*Partner*, *White & Case LLP - London)*, Dr Remy Gerbay (*Lecturer in International Arbitration*, *Queen Mary University of London*), Mr Charles Nairac, (*Partner and Global Head of International Arbitration Practice*, *White & Case LLP - Paris)*, and Mr Aditya Singh, (*Partner*, *White & Case LLP - Singapore*). Additionally, Mr Alexander Fessas (*Secretary General - ICC International Court of Arbitration*) also joined the panel to provide an institutional perspective on the survey results. The panelists presented the overarching highlights of the survey and shed insight into how these metrics will likely influence the trends in arbitration to come. Some of the results were broken down according to region and role, offering a more detailed analysis of specific trends.

As a preliminary order, the panelists took care to articulate the methodology of the survey in order to better contextualise the results. First, Dr Gerbay specified that the survey consists of two phases, first, a questionnaire containing 28 questions regarding the respondents' background and views on arbitration and then secondly an optional interview process for interested participants. Respondents often report working as arbitration lawyers and for arbitration institutions but there was also a significant constituency hailing from academia and in-house counsel as well. For the 2025 survey, Dr Gerbay and the team of QMUL students received over 2,400 responses and conducted approximately 117 interviews. The results were broken down according to the regional affiliation of the respondents who self-identified their region of association according to the place in which they principally practice or operate. In this edition of the survey, nearly 47% of respondents identified the Asia-Pacific ("APAC") as their region of association. The panelists collectively reflected on the fact that the diversity in respondents' regional association provides a window into the arbitration industry's future and diverges from Western centrism to reinforce the status of arbitration as a strongly supported mechanism by players from all over the world.

The conversation later turned to topics surrounding respondents' preferences regarding the rules and seat of arbitration. Notably, trends surrounding the selection of applicable rules and the seat of arbitration were discussed. The panelists highlighted the fact that both London and Singapore have a "*universal appeal*" as seats of arbitration as both sites ranked among respondents' top five preferred seats throughout all six regions of association. Additionally, Mr Singh elaborated on this trend in the context of arbitration rules in light of the survey's evidence that Singapore is a globally preferred arbitration forum by all regions, pointing out that the rules of the Singapore Arbitration Centre ("SIAC") have global appeal for parties (in contrast, the rules of the Hong Kong International Arbitration Centre ("HKIAC") are not as widely chosen by regions outside of Asia). He also commented on the enduring appeal of specialised arbitral institutions for maritime or commodity-related disputes. The appeal of Singapore of an arbitration forum and of the SIAC Rules and also the strong presence of regional arbitration institutions in Asia reflects the survey and the industry's emphasis on Asia's growing share of the arbitration industry. Mr Nairac characterised this trend in arbitration as reflective of the region's weight in terms of population and the global economy which will naturally shape the arbitration industry.

Despite the notable representation of arbitration in Asia throughout the survey, European institutions and rules, notably the International Chamber of Commerce ("ICC") and the London Court of International Arbitration ("LCIA"), remained strong contenders throughout nearly all regions. Mr Fessas specifically highlighted respondents' enthusiasm for applying ICC Rules throughout the world as the ICC ranked in the top five preferred rules for nearly all regions in the survey. The strong presence of the ICC Rules is positive news not only for the ICC as an institution but also for the arbitration industry in Paris as a whole. Panelists also highlighted the advantages of French domestic arbitration law in enforcing arbitral awards which can contribute to the ICC's legitimacy and preferred status. Particularly the panelists discussed that France is a favorable jurisdiction regarding ensuring the enforceability of arbitral awards, even those annulled at the seat in arbitration. Although a large proportion of survey respondents seemed reluctant to support the enforceability of arbitral awards annulled at the seat, the panelists discussed the benefits of this practice, in reality, particularly in terms of increasing the certainty of arbitral outcomes and promoting fairness in the arbitration process. However, the survey report also noted that some interviewees have expressed a loss of confidence in Paris due to concerns about recent decisions by the French courts on the enforceability of awards.

Panelists then shifted the conversation to strategies to address difficulties in the *status quo* of arbitration, which notably include various procedural inefficiencies stemming largely from a lack of proactive case management by arbitrators and adversarial approaches and over-lawyering by counsel. The conversation quickly turned towards how to address these challenges and reinforce the marketability of arbitration as an effective mechanism for clients to resolve disputes. Mr Nairac specifically brought up the central role that clients play in shaping arbitration as they dictate not only the initial contractual provisions relating to arbitration clauses and agreements, but also remain the main drivers behind the industry trends discussed in the survey. Further, Mr Nairac reinforced the fact that clients remain the ultimate decision makers in arbitration matters as they not only shape the initial contractual framework of arbitration, but remain as active participants throughout the case as well. Therefore, the panelists marked the significant importance of client buy-in and input for the arbitration process to run smoothly. To this end, Ms Connellan articulated the importance of adapting arbitration strategy to clients' needs by highlighting the success of expedited procedures for some client matters. Survey respondents echoed this preference reporting that they would use the mechanism of expedited procedures again as it significantly decreases costs and delays.

The conversation concluded by offering a lens into the future of arbitration, specifically by exploring topics surrounding the confidentiality of hearings and of final awards. In the survey, 90% of respondents opposed making hearings open to the public in commercial arbitrations, however, in matters involving states or public-sector investment 59% of respondents supported publishing redacted awards. These metrics show the growing sensitivity of topics relating to confidentiality and public-sector matters as stakeholders become increasingly likely to advocate for public access to arbitration. The panelists offered a multitude of solutions to curb this concern while still maintaining the integrity of arbitration as a sensitive and largely confidential dispute resolution process. Mr Nairac articulated that there are other ways of ensuring transparency other than public awards and in the same vein, Ms Connellan also highlighted the growing share of cases involving environmental and human rights issues in the future which imply similar concerns surrounding confidentiality and public interest.

The world of arbitration is always rapidly evolving, and the White & Case and QMUL International Arbitration Survey offers a rare opportunity to track these changes and also offer a window into future evolutions within the field. This event was an amazing opportunity for experts in academia, private practice, and arbitral institutions to convene and share their valuable insights with the broader arbitration community.

IT'S NOT EASY BEING GREEN: AT THE CROSSROADS BETWEEN ESG, TPF AND IA

By Agathe Bertoux and Ifigeneia Betzou

On Wednesday, 9 April 2025, Fieldfisher and the International Bar Association ("IBA") co-hosted a panel discussion on the theme: "*It's not easy being green: At the crossroads between ESG, TPF and IA.*"

The panel was composed of Mr Marc Krestin (*Partner, Dispute Resolution at Fieldfisher, Amsterdam, Netherlands*), Mr Jonathan Barnett (*Director, International Arbitration at Fieldfisher, Vienna, Austria*), Mr Leon Ioannou (*Investment Manager & Senior Legal Counsel at Omni Bridgeway, Paris, France*), Mr Alexander Slana (*Head of Legal Services/Compliance/ Internal Audit at KELAG, Corinthia, Austria*), and Ms Caroline Swartz-Zern (*Special Counsel & Member of the Sustainability Task Force at Australian Centre for International Commercial Arbitration ("ACICA"), Melbourne, Australia*).

The panel explored the convergence of three highly interrelated and influential themes currently shaping the landscape of dispute resolution in the energy and infrastructure sectors: Environmental, Social, and Governance ("ESG") factors, third-party funding ("TPF"), and international arbitration ("IA").

As ESG principles continue to drive transformative shifts in global business and arbitration practices, the discussion tackled key questions facing market participants — from navigating the wave of emerging regulations and integrating ESG clauses into contracts, to identifying trends in disputes and understanding how litigation funding is enabling these developments.

Together, they shed light on how these evolving elements intersect to fundamentally reshape global strategies, financing models, and approaches to dispute resolution.

Mr Barnett opened the discussion by guiding the audience through the complex web of ESG, TPF and IA, setting the tone for a multifaceted panel. Mr Krestin then presented findings from the ESG Subcommittee of the IBA Arbitration Committee, particularly focusing on the committee's 2023 report. He outlined three chapters of the report: first, how ESG-related obligations are increasingly found in commercial contracts, second, in investment treaties, and third, how they are influencing dispute resolution processes ranging from litigation to arbitration and ADR. The report is based on various types of research, including desk research, surveys and roundtable discussions with in-house counsels of major international companies.

Ms Swartz-Zern highlighted the innovative and very practical approach of the ACICA Protocol "*Towards More Sustainable Arbitral Proceedings*", which encourages a shift in sustainably managing arbitral proceedings. She argued that sustainability in arbitration goes beyond paper reduction or fewer flights. It is about "*taking a step back*", redefining priorities, budgeting effectively from the outset, and embracing a change in mindset and conduct. The Protocol empowers parties and tribunals to voluntarily implement sustainable practices by increasing awareness and offering practical tools for change. "*Do I want to spend a lot of money on document disclosure? Probably not*", she noted, highlighting how early planning and preparation can lead to efficient allocation of resources.

Mr Slana was invited to answer the question: what are the primary challenges that you face in ESG disputes and in dealing with ESG conditions? He offered an unfiltered view into the complexities of ESG compliance from the corporate side, sharing experiences from KELAG's involvement in intra-EU renewables arbitrations. He highlighted the tension between long-term strategic investment and unstable regulatory environments, using the example of a renewable energy scheme in Romania that was dismantled shortly after its implementation. He detailed how KELAG had to argue sustainability, even in the absence of a formal protocol at that time, to avoid unnecessarily burdensome proceedings in distant locations, like holding a hearing in Washington DC when the vast majority of parties and persons were based in Europe.

His insights exposed how companies must navigate unpredictability, governmental pushback, and evolving legal landscapes. In the context of this uncertain legal landscape, he also spoke about the complexities of enforcement proceedings of intra - EU investment awards, as conflicting rulings have arisen between arbitral tribunals and the European Commission, in addition to the Achmea and Komstroy decisions. Regarding his broader investment strategy, Mr Slana explained that, due to the unpredictable legal framework in the European Union, KELAG has chosen to avoid certain regions altogether. This leads to less investment, and as a result less progress towards a greener EU.

Mr Ioannou emphasised the evolving role of litigation funders in ESG-related arbitration. He underscored how ESG disputes, although still nascent, are growing in number and complexity. He discussed challenges in assessing risks, causation and quantification in environmental disputes, especially when legal and scientific standards are still under development. According to him, funders are increasingly targeting cases with clear social and environmental implications, but the lack of legal clarity and evolving jurisprudence makes decision-making more difficult. Nevertheless, TPF is becoming a key driver in ensuring access to justice for claimants who might not otherwise have the resources to pursue claims.

Some investors have different priorities, and many are particularly sensitive to and interested in Environmental, Social, and Governance factors. There are ESG-focused funds specifically targeting cases that align with these values. Funders can and do consider financing and pursuing claims where ESG components are present. Investors are increasingly seeking returns from cases that align with ESG principles.

Under EU law, companies above a certain size are now required to disclose information regarding the risks and opportunities they perceive in relation to social and environmental issues, as well as the impact of their activities on people and the environment.

The first companies subject to the Corporate Sustainability Reporting Directive ("CSRD") must apply the new rules starting from the 2024 financial year, with their first reports due in 2025.

Regarding compliance with such Directives, Mr Krestin noted that the rules are constantly evolving, and it is crucial to remain flexible and adaptive. Draft versions often differ significantly from the final adopted texts. Companies must stay alert to these changes and understand their new obligations. Increasingly, companies are expected to integrate ESG requirements directly into contracts, and ESG clauses are now commonly found in due diligence processes. ESG compliance is also being pushed further down the supply chain, with companies imposing requirements on their suppliers. It seems that compliance is becoming a complex and ever-shifting challenge. Before the CSRD was fully in place, there was often confusion or misinterpretation of legal requirements. Companies may invest time and resources into compliance frameworks that are later altered or deemed insufficient.

Should companies invest energy and resources into a system that is still evolving and somewhat uncertain?

The panel discussed the fact that the regulatory landscape is indeed becoming increasingly fragmented and complex. The CSRD is not the only Directive of its kind. Soft law frameworks, such as the OECD Guidelines for Multinational Enterprises, are also emerging and gaining influence over time. While keeping up with these developments involves a cost, it is necessary. Companies must conduct proper risk analysis—not just for compliance, but to mitigate litigation risks, avoid disruptions in their supply chains, and protect their reputations.

Ultimately, ESG is becoming a condition for market access. It is no longer just a question of compliance or cost. There is also mounting pressure from stakeholders and investors. ESG standards are becoming embedded into the fundamentals of doing business, and companies that fail to meet them risk being left behind. The session concluded on a hopeful note: while it may not be easy being green, it is indeed possible to be greener, through collaboration, innovation, and sustained commitment to change.

REGIONAL PERSPECTIVES ON ARBITRATION IN EASTERN EUROPE AND CENTRAL ASIA: TRENDS AND KEY CONSIDERATIONS

By Layla Mzher and Jessica Dannery

In the shadow of war and shifting power dynamics, arbitration in Eastern Europe and Central Asia is not merely surviving - it is developing, adapting to geopolitical shifts, and in some areas, setting new institutional standards. At the panel titled "*Regional Perspectives on Arbitration in Eastern Europe and Central Asia: Trends and Key Considerations*", organised by Nash Arbitrazh during Paris Arbitration Week and hosted by White & Case in collaboration with Ankura, leading voices in the field dissected how geopolitics, legal reform, and institutional evolution are reshaping the arbitral map of this region. The discussion was moderated by Ms Alexandra Wintrebert (*Senior Director - Ankura*) and the panel brought together Ms Anna Guillard Sazhko (*Independent Counsel and Arbitrator - Turkic Arbitration Association*), Mr Sergii Melnyk (*Counsel - KNOETZL*), Ms Nataliia Tuzheliak (*Associate - White & Case LLP*), Mr Rostislav Pekar (*Partner - Squire Patton Boggs*), and Mr Kevin Nash (*Director General - London Court of International Arbitration* ("LCIA")). Each panelist brought their unique vantage point, but the discussion coalesced around a single thesis: persisting through challenges, arbitration in Eastern Europe and Central Asia is emerging not only with greater resilience but also with new strategic relevance in the global dispute resolution ecosystem.

The discussion opened with an affirmation of the perseverance of arbitral institutions in Ukraine. As Ms Tuzheliak highlighted, Ukrainian arbitration institutions have remained open and operational throughout Russia's invasion of Ukraine and the ongoing hostilities, handling over 450 cases in 2024 alone, with many resolved within an expedited timeline of under six months. The country's arbitration community has emerged as a key pillar in ensuring legal certainty and investor confidence in spite of challenging and uncertain times, and Ukraine's commitment to maintaining arbitral institutions has been recognised and reinforced by international legal partnerships. A particularly notable development in this regard is the long-term bilateral agreement signed between Ukraine and the United Kingdom. The One-Hundred Year Partnership Agreement between the United Kingdom and Ukraine is a strategic partnership that underpins the largest reconstruction effort in modern European history, facilitating equity funding and institutional financing.

Recent developments illustrate how Russia has increasingly relied on domestic legal mechanisms to delegitimise international arbitral proceedings and contest arbitral awards. Ms Tuzheliak specifically noted that such Russian efforts have encountered limited success. European courts, including the Supreme Court of the Netherlands, have generally upheld a number of international arbitral awards against Russia in the proceedings brought following Russia's annexation of Crimea, in which Russia contested the jurisdiction of arbitral tribunals or declined to participate. Arbitral tribunals have responded in some instances with anti-anti-suit injunctions to protect the integrity of the arbitral process and ensure the continuation of the proceedings. One example of Russia's approach is the series of *Gazprom* cases, which, as highlighted by Mr Pekar, reveal the complexity behind its strategy in energy-related arbitration disputes. Some tribunals have responded to Russia's attempts to obstruct arbitration by awarding not only damages but additional sums to offset Russian penalties, a bold move that raises significant enforcement risks. In *OMV PeE v. Gazprom* for example, Mr Pekar noted that Russia retaliated against Austria by cutting off gas delivery entirely to post-award, highlighting the challenges of translating arbitral success into effective enforcement.

In the context of the intersection between conflict and arbitration, Mr Nash shed light onto how arbitral institutions navigate sanctions. The LCIA, for instance, continues to hear cases involving sanctioned parties, as the existence of sanctions alone does not inherently preclude arbitration. However, he explained that the real constraint in this context is financial, as sanctions can complicate compliance at the enforcement stage, particularly when processing payments, appointing arbitrators, or transferring awards. Nevertheless, Mr Nash cautioned that institutions must continuously update their compliance mechanisms, especially in cases involving defense-related sectors or parties subject to heightened regulatory scrutiny.

Considering the role of sanctions and armed conflict in arbitration, Mr Melnyk turned the discussion to a growing trend in arbitration: the surge in defense and security related disputes. With countries across Eastern Europe currently reinforcing their defense capabilities, the number of disputes involving weapons contracts, logistics, and confidential cross-border sales has exponentially increased. Arbitration, with its flexibility and confidentiality, has become the default venue for disputes relating to the defence sector.

Turning to Central Asia and neighboring countries, Ms Sazhko offered a forward-looking analysis of the emergence of new arbitration centers in Azerbaijan, Kyrgyzstan and Türkiye alongside the strengthening of established institutions across the region. These developments, Ms Sazhko explained, reflect a regional effort to build domestic arbitration capacity, foster healthy competition with international institutions, and align legal mechanisms with broader economic cooperation. She added that these shifts are unfolding alongside wider geopolitical initiatives, including the creation of the Turkic Investment Fund and the Organization of Turkic States' efforts to promote regional coordination through shared economic, cultural and linguistic ties.

Ms Sazhko also noted the accelerating drive behind regional infrastructure projects designed to remove logistical barriers and enhance connectivity, particularly the development of the "*Middle Corridor*", a strategic transport route linking Asia and Europe that is 2,000 kilometers shorter than the traditional northern route. Improvements to this corridor, along with new railway links between China, Kyrgyzstan, and Uzbekistan, are expected to significantly boost trade flows, facilitating faster freight movement and expanding cargo volumes to 11 million tons by 2030. These transformative initiatives, Ms Sazhko concluded, are positioning Central Asia as a critical hub for global commerce and cross-border cooperation.

In conclusion, the panel offered a nuanced assessment of how arbitration is evolving across Eastern Europe and Central Asia in response to contemporary geopolitical and legal challenges. As states in the region confront shifting power dynamics and increasing regulatory complexity, arbitral institutions are demonstrating resilience through procedural adaptation, institutional development, and evolving strategies for enforcement. The region is also becoming a site of innovation and institutional adaptability in the context of arbitration. For legal practitioners and institutions alike, this evolving landscape demands close attention.