Vienna Arbitration Days 2023

IT TAKES TWO TO WALTZ – IS INTERNATIONAL ARBITRATION OUT OF STEP WITH ITS USERS?

World Café - Saturday 13 May 2023, 09:30 to 1:30 am

Organizers:

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- ANNA FÖRSTEL-CHERNG | Deputy Secretary General | VIAC
- JOHANNA KATHAN-SPATH | Associate | Pitkowitz & Partners

Moderators (in alphabetical order):

- MARIJA DOBRIĆ | Associate | Binder Grösswang
- EVGENIYA GORIATCHEVA | Senior Legal Counsel | Permanent Court of Arbitration (PCA)
- MANUELA GROSU | Managing Associate, Attorney-at-law | KPMG Legal Tóásó Law Firm | VIAC Community Ambassador-Hungary
- MAREK JEZEWSKI | Partner, Head of Dispute Resolution | Kochański & Partners
- ALEKSANDER KALISZ | Research Associate (Dispute Resolution) | The Dickson Poon School of Law, King's College London | Centre of Construction Law & Dispute Resolution
- JUDITH KNIEPER | Legal Officer | UNCITRAL – United Nations Commission on International Trade Law
- STEFAN KRÖLL | Professor for International Dispute Resolution | Bucerius Law School |Chairman of the Board of Directors | German Arbitration Institute (DIS)
- SEAN MCCARTHY | Irish Barrister, New York Attorney, Founder & Principal | Aegis Arbitration | Co-Founder & Moderator | ArbTech, Co-Founder & COO | Woander
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- ALEXANDER ZOLLNER | Counsel | Wolf Theiss

1. Organisation

The Arbitration World Café was first introduced at the Vienna Arbitration Days 2016 by Nikolaus Pitkowitz in order to facilitate interaction between the audience and top arbitration experts. The main purpose was to create a suitable platform to discuss necessary changes, develop new concepts and find common ground. The World Café was extremely well received from the outset and has since become a fixed component of the Vienna Arbitration Days.

Each table deals with a distinct subject related to the topics presented during the Panels of the Conference Day and is presided by two table moderators. After a round of discussion (approx. 60 minutes), the audience is rotated to another table of their choice whereas the table moderators remain seated at their designated table.

2. Tasks of Table Moderators

The task of the table moderators is to structure and lead the discussion on the table topic as well as to ensure a continuous flow of discussion. The moderator has prepared issues connected to the topic in advance to trigger thought provoking discussions. The goal of the World Café Session is to further develop issues discussed by the Panels on the Conference Day (see the program of the 2023 Vienna Arbitration Days).

3. Follow-Up Publication: Austrian Yearbook on International Arbitration 2024

The discussions that take place at the individual World Café sessions should be well documented by the moderators since the outcome will be used as a basis for an article that will be published in the Austrian Yearbook on International Arbitration (available at Manz Verlag as a hardcover book and online via Kluwer).

4. Conference Material

In order to give conference participants an overview of the table topics and the allocation of moderators, we distribute a schedule for the World Café. Hopefully, this will facilitate the choice of tables for the participants.

5. Agenda

9:30 – 10:00	Welcome Coffee
10:00 – 10:30	Introduction to the World Café
10:30 – 11:30	First Round of Discussion
11:30 – 12:00	Coffee Break
12:00 – 1:00	Second Round of Discussion
1:00 – 1:30	Chorus Juventus - Youth Choir of Vienna Boys' Choir

6. Overview of Topics and Moderators

INTRODUCTION: NIKOLAUS PITKOWITZ, ANNA FÖRSTEL-CHERNG, JOHANNA KATHAN-SPATH

NO	Table Topic	Table Moderators
1	ARBITRATOR SELECTION METHODS AND CRITERIA: Approaches to finding your tribunal	PETER RIZNIK MATHIAS WITTINGHOFER
2	PICKING EXPERTS LIKE AN EXPERT	MANUELA GROSU STEFAN KRÖLL
3	CURRENT WORK AT UNCITRAL WORKING GROUP II: Introducing new model clauses for specialized express dispute resolution	JUDITH KNIEPER WING NGA (KAREN) NGAI
4	UNCITRAL'S DISPUTE RESOLUTION IN THE DIGITAL ECONOMY PROJECT	MARIANELA BRUNO POLLERO TAKASHI TAKASHIMA
5	GREENER ARBITRATION: How to achieve more sustainable practices in international arbitration?	MARIJA DOBRIĆ HEIDI WALSH
6	HOW TO RESOLVE CONSTRUCTION DISPUTES AND NOT BREAK THE BANK?	ALEKSANDER KALISZ RENATO NAZZINI
7	ARBITRATION 4.0 - EFFICIENT DISPUTE RESOLUTION IN THE DIGITAL AGE	SEAN MCCARTHY DAVID TEBEL
8	"THE FAULT, DEAR BRUTUS, IS NOT IN OUR STARS, BUT IN OURSELVES": Obstructive and dilatory conduct in international arbitration	EVGENIYA GORIATCHEVA ALEXANDER ZOLLNER
9	EFFICIENCY THROUGH DIALOGUE: How should we structure arbitration to meet stakeholders' needs?	MAREK JEZEWSKI JOHANNA WIRTH
10	MAXIMIZING EFFICIENCY IN FUNDED CASES IN THE COMMON INTEREST OF CLIENT, ATTORNEY AND FUNDER	AIJA LEJNIECE MALTE STÜBINGER
11	WHAT GETS MEASURED GETS MANAGED	MICHAEL MCILWRATH TONI NOGOLICA

Outlines of World Café Tables

Table 1

Arbitrator Selection Methods and Criteria:
Approaches to finding your tribunal

Table Moderators: Peter Riznik and Mathias Wittinghofer

Framework

- party nomination *vs* selection by institution

Sources (to be ranked)

- Use of directories
- Personal experience / personal Rolodex
- Recommendations

Features and attributes (to be ranked)

- Assertiveness and gravitas
- Availability
- Empathy and openness of mind
- Gender
- Intelligence and perceptiveness
- Knowledge of applicable law
- Knowledge of the specific industry
- Legal background and socialization
- Nationality
- Neutrality and conflicts
- Personal acquaintance and relationship ("rapport")
- Practical experience
- Settlement style: "judge" or "mediator"?
- Style of conducting proceedings

Methodology:

- Difference *party-nominated* vs *chairperson*?
- Interviewing prospective candidates
- Consultation with party-nominated arbitrator to find chairperson: danger of "fraternization"?

Table 2

Picking experts like an expert

Table Moderators: Manuela Grosu and Stefan Kröll

In the course of the round table we will discuss the most critical aspects, difficulties and possible solutions for selecting the most appropriate party-appointed and tribunal-appointed expert in international arbitration.

1. PARTY-APPOINTED EXPERTS

Question: Which are the three most important criteria you care about when selecting an expert as a counsel (and why)?

Key factors to consider:

- **Timing**

  Question: Which are the pros and cons regarding whether prior to or after the commencement of the arbitration proceedings appointment of an expert?

- **Impartiality**

  Question: Who should conduct the conflict check to identify potential conflict, bias or interest factors?

- **Availability**

  Question: How to ascertain whether the expert is going to be available for the duration of the arbitration, and can devote sufficient amount of time to the procedure?

- **Scope of engagement – instructions**

  Question: What happens when the arbitral tribunal touches on an issue that is not part of the instructions or the engagement of the expert?

- **Relevant expertise**

  Question: How to assess the knowledge of any expert when you are not an expert yourself?

- **Communication skills**

  Question: How can we gain information about the communication skills of a potential expert?

- **It turns out there is no need to involve an expert/need to reselect an expert**

  Question: How to avoid the situation/appearance of expert shopping?

2. TRIBUNAL-APPOINTED EXPERTS

Question: What are the particular challenges of selecting a tribunal appointed expert?

- To what extent should parties be involved?
- What procedures are to be adopted to avoid “losing” all suitable experts?
- Relevance of cost considerations in selecting tribunal appointed experts?
- How to deal with non-cooperative parties?
- … and all of the issues for party-appointed experts in a different context.

Table 3

CURRENT WORK AT UNCITRAL WORKING GROUP II: Introducing new model clauses for specialized express dispute resolution

Table Moderators: Judith Knieper and Wing Nga (Karen) Ngai.

The discussion at the roundtable will focus on the topics of technology-related dispute resolution and adjudication, involving innovative ways to further accelerate the resolution of disputes.

By way of background, UNCITRAL Working Group II is currently discussing the topics of technology-related dispute resolution and adjudication jointly and to consider ways to further accelerate the resolution of disputes, by building on the UNCITRAL texts (including the UNICTRAL Arbitration Rules and the UNCITRAL Expedited Arbitration Rules). The proposed instruments would allow disputing parties to tailor the proceeding to their needs by using model clauses as stand-alone clause or in conjunction with other clauses to supplement the UNCITRAL arbitration procedures.

At this stage, we have provided model clauses for (i) a highly expedited procedure, which allows for completion of the arbitration within 60 or 90 days from the constitution of the tribunal ("highly expedited arbitration"); and (ii) a simplified mechanism to resolve disputes in a very short timeframe involving a third-party specialist, which such outcome being enforceable across borders ("determination by a neutral specialist"), but allowing a party not being satisfied with the rapid decision, to launch an ordinary arbitration remains open, provided the complied with the rapid determination. We have further proposed model provisions or guidance texts, on experts, confidentiality, and evidence etc.

In order to better understand the needs of users and experts and further advance our work, we have designed a questionnaire to collect views and guide us on the way forward. We attach our questionnaire below, in which we kindly ask participants to complete. Besides completing the questionnaire, we are very interested to hear your thoughts and insights on UNCITRAL's work on the present topic during the round-table discussion.

Link to the Questionnaire:
https://docs.google.com/forms/d/e/1FAIpQLScnsX8CgJBke9Ja2gfnXiCPOHoeZdI_IWJAlGYGWhVc8Lfgvg/viewform?usp=sf_link

Table 4

UNCITRAL's Dispute Resolution in the Digital Economy Project

Table Moderators: Marianela Bruno Pollero and Takashi Takashima

Come and sit at our table to contribute to UNCITRAL's global initiative on dispute resolution in the digital economy. Let us discuss what the new and conventional technologies used in arbitration are, how the practice has adapted to the integration of technology, and what legal norms are necessary for the new digital era.

The secretariat of the United Nations Commission on International Trade Law (UNCITRAL) is mandated to implement the project on the stocktaking of developments in dispute resolution in the digital economy (DRDE). In the project, the secretariat compiles, analyses, and shares relevant information to lay the groundwork for possible future work on updating UNCITRAL texts or developing new ones if necessary. The focus of the project is twofold: a) the disruptive aspects of digitalisation in dispute resolution, especially those with respect to due process and fairness, and b) the enabling aspect of technology, especially its impact on cost and duration.

As part of the project's activities, we are currently in the process of organising discussions to seek inputs from different parts of the world with different legal backgrounds and levels of economic development.

This roundtable will complement the discussions held in Tokyo, New York, Guatemala City and Paris, and we would like to discuss with you the following questions.

- How can legal frameworks be adjusted to be more conducive to the issuance and enforcement of electronic arbitral awards?;
- How can case management be done better to address the problem of information overflow?;
- What are the latest technological means used to present submissions and evidence in arbitration?;
- How are hearings in arbitration and mediation conducted online?;
- Where are we in terms of AI-assisted decision-making or AI decision-making?;
- What can be done so that practice on interim measures is up to speed in the digital economy?;
- What are the safeguards needed for and principles applicable to dispute resolution on online platforms?

Table 5

Greener Arbitration
How to Achieve More Sustainable Practices in International Arbitration?

Table Moderators: Marija Dobrić and Heidi Walsh

International arbitration has an impact on our environment that should not be underestimated. A study conducted by the Campaign for Greener Arbitrations ("**Campaign**") revealed that just under 20,000 trees would be required to offset the total carbon emissions resulting from just one medium-sized arbitration, which is four times the number of trees in Hyde Park.[1]
We intend to discuss the impact of international arbitration on the environment and different ways on how to reduce the carbon footprint of our legal practice. We are particularly curious to hear your thoughts and which sustainable measures you implement in your day-to-day legal practice.
Please find below several questions that should spark your interest in this topic and stimulate our discussion:

- The Campaign identifies air travel, hard copy filings and printing of submissions among the main factors that contribute to the arbitration community's carbon footprint. The Campaign's Green Pledge thus strongly encourages e.g. the use of videoconferencing tools instead of travel.

    - What are your experiences with videoconferencing instead of physical meetings?
    - How has videoconferencing changed your life?
    - What is your position with respect to virtual hearings vs physical hearings (views from arbitrator/counsel perspective)?
    - What are the practical benefits and challenges?
    - Are there any legal/due process considerations parties must keep in mind?
    - Any war stories about virtual hearings (fully virtual or hybrid)?

- The Campaign seeks to promote the implementation of environmentally friendlier measures within the arbitration community, which includes parties, arbitrators, counsel, institutions and hearing venues.

    - How do you see the role of parties and arbitrators in implementing sustainable measures to reduce the carbon footprint of arbitrations?
    - Do you believe that it should be left to the parties to implement eco-friendly measures at the outset of the proceedings (e.g. in the arbitration agreement)?
    - What are the expectations of parties with respect to the environmentally friendlier conduct of arbitrations?

[1] Campaign for Greener Arbitrations, A significant impact, accessible at: https://www.greenerarbitrations.com/impact (26.04.2023); *de Brugiere/Foty*, Sustainability and Diversity in the Newly Virtual World of International Arbitration, Kluwer Arbitration Blog, accessible at: https://arbitrationblog.kluwerarbitration.com/2020/12/09/sustainability-and-diversity-in-the-newly-virtual-world-of-international-arbitration/ (26.04.2023).

  - What is the role of counsel with respect to the reduction of the carbon footprint in arbitrations?
  - Should arbitral tribunals be given the power to order the parties to implement sustainable measures in the absence of party agreement?
  - What measures could arbitral institutions and hearing venues take to reduce their and make their users reduce their carbon footprint?

- The Campaign has published Green Protocols in several languages (not German yet, unfortunately).

  - Are you aware of the Campaign's six Green Protocols and its Model Green Procedural Order?
  - Have you ever used the Protocols and if yes, in which capacity (arbitrator, counsel, institution, hearing venue)?
  - Do you think they provide a useful tool for arbitration practitioners to conduct their practice in an environmentally friendlier fashion?
  - Did you have proceedings in which the Procedural Order was used as whole or in part?
  - Any concerns and criticism in relation to the Green Protocols?

Table 6

How to resolve construction disputes and not break the bank?

Table Moderators: Aleksander Kalisz and Renato Nazzini

1. Considering all the options - arbitration as a last resort: One feature of construction dispute resolution is that arbitration, alongside litigation, is viewed as a last-tier forum for resolving disputes. Construction contracts, such as FIDIC, NEC and JCT forms, typically provide for multi-tiered dispute resolution. Therefore, in some cases, avoiding arbitration is the best method of saving costs and streamlining the resolution of disputes. The following techniques of dispute resolution will be discussed:

    - **Dispute avoidance panels/dispute manager** –dispute avoidance panels are tasked with making suggestions to prevent resorting to dispute resolution. For example, the construction of the 2012 London Olympic Games involved a highly successful, independent dispute avoidance panel. The panel focussed on finding pragmatic solutions before potential problems could turn into disputes that might require lengthy resolution measures. Alternatively, and depending on the size of the project, a single dispute manager may be used. Do these panels work? Is it a good idea to use them in contracts? What are the conditions for the failure or success?

    - **Early warning** – by way of example, the NEC Engineering and Construction Contract provides that both parties must give early warning of anything that may delay the works or increase costs as soon as they become aware of them. They should then hold an early warning meeting to discuss how to avoid or mitigate impacts on the project. Provided the process is managed effective and the right contractual framework is in place, this could avoid disputes. However, there could also be a reluctance to raise early warnings and, in any event, could parties be forced to agree on solutions so as to avoid disputes?

    - **Mediation** –Currently, in England & Wales, the Pre-Action Protocol for Construction and Engineering Disputes requires parties in dispute to meet, at least once before litigation commences, to discuss whether some form of ADR, such as mediation, would be a more appropriate means to resolve the dispute. When can mediation work in construction disputes? How could mediation be coordinated with arbitration?

    - **Early neutral evaluation** – this form of involving a third-party evaluator boasts a flexible procedure under the ambit of the contract. This method of ADR can particularly help parties weigh their chances of success in litigation or arbitration and facilitate settlement. It may also resolve a particularly stark impasse in dispute resolution or disillusion a party as to the merits of their allegations.

    - **Construction adjudication** – the Housing Grants, Construction and Regeneration Act 1996 gave birth to a statutory right to adjudicate most disputes concerning a UK construction project. A recent report by King's College London is a testament to the considerable success of adjudication as a quick, relatively affordable and enforceable method of dispute resolution. Adjudication has been adopted in different forms by many common law jurisdictions but remains largely unknown in civilian systems. Any lessons that can be learnt for dispute resolution more generally?

    - **Dispute boards** – there are many types of dispute boards established at the start of the construction project that can either be adjudicative or advisory in nature, depending on party

agreement. Dispute boards have received a global reach through FIDIC forms. How does the procedure work and how effective is it? What are the potential cost savings?

- **Litigation** – exploring the perceived 'competition' between courts and tribunals, with particular emphasis on specialist construction courts such as the English Technology and Construction Court and the procedural innovations, like the Scott Schedule, that it established. The Technology and Construction Court Guide provides guidance on the conduct of litigation within the construction industry and states that the court should encourage parties to use ADR.

2. Case management techniques: The advantage of arbitration, particularly when compared to the different types of ADR, is the various case management techniques at the disposal of arbitrators. The following will be discussed:

   - **Emergency arbitration** - emergency arbitration is used increasingly frequently in construction. What are the best-case management techniques to handle this procedure? Does emergency arbitration apply to multi-tier dispute resolution?

   - **Summary disposal** – the procedure has received criticism for subjecting the arbitrator to 'procedural paranoia' but could be extremely useful to dispose of claims and defences that are clearly without merit. A number of arbitration rules provide for summary disposal, in one form or another. When and how can this procedure be used? What are the risks? Will courts support this power of the arbitrators in the absence of statutory backing?

   - **Expedited procedure** – both VIAC and other arbitration rules provide for an expedited procedure, albeit with differences. Although expedited procedures help avoid delays, they may restrict tribunals' ability to appreciate all evidence which is often critical and abundant in construction disputes. Should there be a wider use of the expedited procedure? What are the challenges that this would pose? What lessons can we learn from emergency arbitration, adjudication and DABs?

   - **Bifurcation** – although bifurcation is an established case management technique, it poses considerable difficulty if issues divided into different phases are closely connected. Bifurcation may also considerably delay the proceedings, meaning that the arbitration may not keep up with changes in law or the economic situation of the parties. On the other hand, dividing complex disputes into stages that can be more easily and effectively managed - and could be determinative of the entire case - may also entail significant cost and time savings.

   - **Expert and fact witness evidence** – the IBA and Prague Rules contain innovative solutions for managing witness evidence. The use of joint expert reports, concurrent expert evidence ('hot-tubbing'), strong case management by the tribunal, and tribunal-appointed experts could all play a significant role in resolving construction disputes, but also mark a divide between civil and common law jurisdictions. Fact witness evidence has often been misused to introduce long factual narratives, explanations or commentary on documents and contracts or even legal submissions. Cross-examination may be a lengthy and expensive exercise aimed at discrediting the witness not conducive to establishing the facts of the case. The session will discuss best practices and pitfalls of the use of expert and fact witnesses in construction disputes.

Table 7

ARBITRATION 4.0 – EFFICIENT DISPUTE RESOLUTION IN THE DIGITAL AGE

Table Moderators: Sean McCarthy and David Tebel

This roundtable discussion will focus on the practical aspects of the use of legal tech tools and electronic communication in the daily practice of international arbitration. Participants will exchange views on issues such as the tools and tech services they employ regularly during the different stages in the lifecycle of a dispute, their views on the potential future use of AI tools in international disputes, and the 'do's and don'ts' in relation to remote/hybrid working.

1. Legal Tech Tools in Case Management

The discussion will follow the typical lifecycle of a dispute, in order to highlight some of the tech tools which can be employed at each relevant stage to increase efficiency and effectiveness:

- Client Intake - Initial collection of relevant documents, dispute analysis
- Legal Risk Analysis - Decision tree software
- Document Review - Case management software & eDiscovery tools
- Arbitrator Selection - Data analytics on arbitrators
- Submissions - Tools for managing exhibits & eBriefs
- Hearing- Electronic hearing bundles, remote hearings & electronic presentation of evidence
- Pre- and Post-Award Stages - AI-based support in drafting the award
- Costs - Legal spend management and eBilling tools

2. AI & Large Language Models

The relevance and potential future use of AI and, in particular, Large Language Models (LLM's) in the practice of international arbitration through the lens of the following questions:

- What is the basic technology behind LLM's?
- What are the strengths and weaknesses currently exhibited by LLM's generally?
- What is the current maturity level of this technology for disputes lawyers?
- Which tasks are LLM's suited and not suited to in our field?
- What is best practice for using these tools in the legal services context (confidentiality and ethics issues in particular)?
- What advancements can be expected in LLM's over the next 2-3 years?

3. Electronic Communication

- Participant survey and discussion on the topic of remote/hybrid working:
    - Identification of which tech services participants are using to facilitate this type of work and coordination with their colleagues;
    - Discussion about which of the above services work well and which do not, in order to locate the pain points; and
    - Presentation of any other communication tools that may alleviate some of the issues encountered.
- Discussion on the prevalence of remote hearings in participants' cases:
    - Whether case management conferences, procedural hearings or other meetings of counsel and the tribunal are increasingly being held remotely, and how that may differ from the main hearing;
    - Remote hearing protocols agreed by the parties or rules stipulated by the arbitral tribunal; and
    - Participants' experience of different virtual hearing services and their feedback for the benefit of the group.
- Discussion on collaboration with colleagues, clients, and co-counsel:
    - Participants' experience with document sharing platforms and services;
    - Best practices for data security.
- Use of other communication tools with colleagues, clients, and co-counsel (email vs messaging)

Table 8

"THE FAULT, DEAR BRUTUS, IS NOT IN OUR STARS, BUT IN OURSELVES": OBSTRUCTIVE AND DILATORY CONDUCT IN INTERNATIONAL ARBITRATION

Table Moderators: Evgeniya Goriatcheva and Alexander Zollner

We intend to discuss the prevalence of obstructive and dilatory conduct in international arbitration and how such conduct may be addressed by the various parties involved.

Obstructive and dilatory tactics, typically used by a respondent side to delay or derail arbitral proceedings, may be a cause of significant frustration among users hoping to find an efficient process and fair remedy in international arbitration. Such tactics range from parties merely dragging their feet to engaging in unethical conduct. In dealing with such tactics, arbitral tribunals must strike a balance between both sides' due process rights, while driving the proceedings to a satisfactory conclusion.

The discussion will focus on the following scenarios:

1. The obstructionist arbitrator

The 'obstructionist arbitrator' is an arbitrator who, without necessarily resigning, refuses to participate in the proceedings or the tribunal's deliberations, or does so only with considerable delay, either on his or her own initiative or under the appointing party's instructions. In some cases, party-appointed arbitrators may time their resignations tactically to frustrate the proceedings at critical junctures. Under procedural rules providing for reappointment using the initial appointment process, a single case may weather multiple resignations of party-appointed arbitrators.

The contemporary approach to resolving this problem is found in the leading institutional rules. Many institutional rules recognize "truncated tribunals" and allow the remaining arbitrators to continue the proceedings in the absence of an obstructionist arbitrator and render an award. Such rules typically also allow the replacement of an arbitrator without using the initial appointment process (see, for example, Article 14(2) of the UNCITRAL Arbitration Rules 2021, Article 12(4) of the PCA Arbitration Rules 2012, and Article 15(5) of the ICC Arbitration Rules 2021). Further, an obstructionist arbitrator may face a reduction of fees (see, for example, Article 39(1) 2021 Swiss Rules and Article 16(6) Vienna Rules 2021) or liability issues, depending on the law applicable to the arbitrator's engagement (see, for example, Section 594(4) Austrian Code of Civil Procedure).

2. Counsel resignations

Consider the following scenarios:

- After multiple extension requests for a submission filing, which are declined by the arbitral tribunal, a party's counsel resigns on the eve of the filing deadline

- After multiple requests for a hearing postponement, which are declined by the arbitral tribunal, a party's counsel resigns on the eve of the hearing

3. Recurrent extension requests and dilatory objections

The simplest and most obvious dilatory tactic is where a party repeatedly requests extensions of time for the filing of submissions or hearing postponements with the aim of delaying the proceedings. A less obvious tactic may be where a party raises every potential objection (be it as to jurisdiction or the merits of a claim) and procedural applications, even if far-fetched and based on unsound reasons, with the object of inflating the arbitration with respect to its content.

Recurring extension requests obstruct the proceedings and can defeat the purpose of establishing a procedural calendar altogether. Objections and requests may distract from the key issues of the arbitration and put the counterparty in a position where it is prevented from dedicating sufficient time to the more important aspects of the arbitration or has insufficient funds to proceed with the arbitration.

We will explore these three scenarios through the following questions (under the Chatham House rule):

(1) As counsel, have you been in a position where a client pressured you to use obstructive or dilatory tactics, or where you considered using such tactics for the benefit of your client to prolong or derail an arbitration?

(2) Have you used or are you aware of colleagues using any of the described tactics?

(3) Should counsel steer clear of such tactics given their ethical duties and potential reputational costs? Are there reputational costs?

(4) When you are representing a claimant and the respondent uses such tactics, in each scenario, how would you like the tribunal to address these issues? Would you ask the tribunal to proceed as a truncated tribunal, or in the absence of counsel? Would you be concerned regarding the enforceability of the resulting award?

(5) Does the strategic withdrawal of an arbitrator constitute a violation of that arbitrator's ethical duties or legal obligations?

(6) For the third scenario, where should the line be drawn at dilatory extension requests and procedural applications? Does it make a difference whether the request comes from a claimant or respondent?

(7) How can arbitral tribunals discourage the parties at the outset of the arbitration from engaging in obstructionist and dilatory conduct? Are there any procedural innovations that can discourage parties from engaging in such conduct?

(8) When appointing arbitrators, do you consider their ability to effectively deal with dilatory and obstructive behavior as a criterion?

Table 9

Efficiency through Dialogue: How should we structure Arbitration to meet Stakeholders' Needs?

Table Moderators: Marek Jezewski and Johanna Wirth

Arbitral institutions have developed various sets of rules designed to improve efficiency and expedite proceedings, introducing provisions on, amongst other things, the organization of case management conferences, emergency arbitration and summary proceedings. Significant energy has been put into revising rules and new instruments are routinely developed to increase the attractiveness of arbitration as the most efficient tool for resolving disputes. But it needs more than that. After all, if the communication channels between stakeholders involved in the arbitration do not work to the best extent possible, even the best set of rules is ineffectual.

How to increase efficiency through dialogue? Does arbitration need more communication between stakeholders? To which extent should arbitrators or arbitral institutions help to establish communication lines? With our panel of participants, we would like to look at these questions from various angles with the goal of answering the question: How should we best structure an arbitration to meet stakeholders' needs?

I. Setting up the Arbitration
- Transactional perspective: arbitration clause
- Choice of arbitral institution / importance of skilled case managers
- Communication between counsel and arbitrators pre-constitution

II. Communication during Trial
- Preliminary views offered by tribunal
- Encouragement of settlement by the tribunal
- How to avoid contradicting expert opinions?

III. The Use of Technology
- Case management and communication via e-platforms
- Use of tracking efficiency of institutions and/or arbitrators
- Advantages of the old school?

IV. The Role of the Institution
- Rules on case management
- Regular feedback on arbitrators?
- Uniform standards across arbitral institutions?

V. The Outcome
- Reasoning of decisions by institutional bodies
- Foreseeability /publication of awards
- Enforceability

Table 10

Maximizing efficiency in funded cases
in the common interest of client, attorney and funder

Table Moderators: Aija Lejniece and Malte Stübinger

We intend to cover the following topics – which are meant rather as guidelines for the discussion than strict agenda points:

1. **Nuts and bolts of Arbitration funding:** Best practices for counsel and inhouse-attorneys on securing funding for a dispute

2. **Funding fathers:** How much power funders (should) have over a case?

3. **Navigating the Bermuda triangle:** The (sometimes delicate) psychology of the funder-client-counsel relationship.

4. **To spend or not to spend:** How to prevent budget conflicts in crucial situations

5. **Hitting the sweet spot:** Identifying perfect funding candidate cases

6. **Funding the defence:** When it makes sense and when it doesn't

Table 11

What Gets Measured Gets Managed

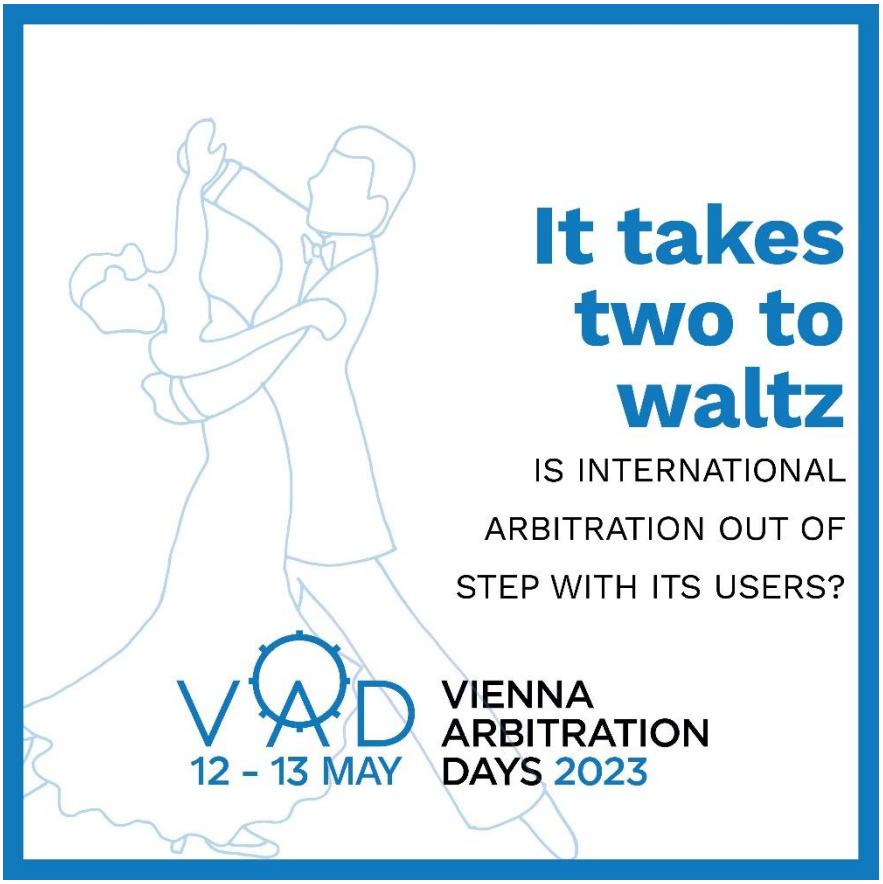
Table Moderators: Michael Mcilwrath and Toni Nogolica

For years there has been much talk of improving the efficiency and cost of international arbitration. But what is efficient? And what is expensive? And how can parties choose rules, institutions, arbitrators, and counsel without data that guides them to choices that fit their expectations? What is quick and cheap for a demand for an uncontested payment of $500,000 may be far too rapid (and a violation of due process) for a $500 million complex, multi-party construction dispute. **For the same reason, the "average" duration of an arbitration can be as useful as knowing that the earth's global temperature is 13.9C when choosing which clothes to bring on a holiday to Helsinki or Rio de Janeiro.**

How can parties make informed decisions on which rules may be more efficient and suitable, and how can institutions assess their own progress vs other institutions, without a common understanding of how to measure an international arbitration? Not only is there a lack of any standard for measuring an international arbitration, such as when it starts and when it ends, there is not even a common definition of what constitutes an "international arbitration" as opposed to a domestic one. For that, the AAA uses a subjective measurement, ie, a determination by its management that a dispute subject to AAA rules has an "international dimension" that would benefit from being administered by its international branch, the ICDR. VIAC, by contrast, uses an objective measure, which is that a dispute is considered **international** in character if at least one party resides outside of Austria. The ICC also uses a similar objective measure of parties having different nationalities.

And defining an international arbitration may be one of the less challenging tasks. Measuring their efficiency is another thing entirely. As the example above indicates, an "average" duration of an arbitration may tell parties (and the institutions) little if the disputes themselves are vastly different. SIAC, for example, has reported that its average case size for 2022 is $22 million. The ICC's, by contrast, is $174 million. How useful is it to know these "averages" without any information about the types of disputes being administered? Or perhaps there exist ways of expressing data that would better indicate how the institutions are meeting the needs of parties than averages of size, duration, etc?

This table at the World Café will ask these and other questions in an attempt to fill in the details of how the issue of standards should be approached, and lead to comparable, actionable data that will help lead to more efficient international arbitration.


It takes two to waltz
IS INTERNATIONAL ARBITRATION OUT OF STEP WITH ITS USERS?
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