Ad hoc arbitration and its enemies

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Introduction

Diversity in maritime arbitration

This magnificent congress brings together arbitrators and a wide range of other participants in maritime arbitration from around the world.

Its organisers and sponsors reflect the diversity of the international maritime arbitration community. At the time of writing, this congress has twice as many sponsors as does the XXVth Congress of the International Council for Commercial Arbitration (ICCA 2020) which is to take place in Edinburgh in May 2020. With admirable drive and enthusiasm, illustrating the links between maritime and non-maritime commercial arbitration, and putting Brazil in the forefront, the CAM-CCBC is both a platinum sponsor of ICMA XXI and a sapphire sponsor of ICCA 2020.

Alongside arbitral institutions like the CAM-CCBC and the CBMA, other sponsors of ICMA XXI include associations of arbitrators, eg the Society of Maritime Arbitrators (SMA) of New York, the German Maritime Arbitration Association (GMAA), and the London Maritime Arbitrators Association (LMAA), whose members conduct ad hoc arbitrations.

Arbitration is ad hoc when it takes place without being administered by an institution under the institution's own arbitration rules. It does not have to be 'pure' ad hoc in the sense that the parties have not agreed on any rules at all to govern the procedure. Instead, it can be conducted under a set of rules, agreed by the parties, such as the UNCITRAL Arbitration Rules 2010 for use in commercial arbitrations of all kinds, or the rules of an association of arbitrators, which have been designed by, and for, users of arbitration in a particular business sector, such as the LMAA Terms.

ICCA 2020's sponsors do not include any such associations. ICCA, which is based at the headquarters of the Permanent Court of Arbitration (PCA) in the Hague, concentrates on arbitrations arising from projects and investments, [2] notably in the niche and declining area of investor-state disputes.[3] Arbitrations of this kind tend to be administered by institutions.

ICCA's activities include 'promoting the harmonization of arbitration and conciliation rules, laws, procedures and standards.'[4]

Lord Mustill wisely said in the first Cedric Barclay Lecture at ICMA X in Vancouver on 11 September 1991, 'We should I believe become alert when we hear the word, "harmonisation"'. He went on to explain, 'the whole point of arbitration lies in the freedom of the parties to choose the way in which they want to resolve their issues… I believe that far from making a fruitless and stultifying effort towards uniformity we should cleave to the

freedom of the parties to say – "We like the way they do things there, that's where we want to go…"'.[5]

Harmonisation is inimical to the practice and development of international arbitration. It is more important to promote, as ICMA XXI does, the diversity of procedures, rules, centres, and seats, which are available for commercial arbitration, and which differentiate it from litigation in domestic courts.

ICMA is a forum for an exchange of views and is rightly proud of being 'an ad hoc event', not a formal organisation.[6] It attracts a wide range of delegates from the many different professions, legal traditions and jurisdictions involved in maritime arbitration worldwide.

Illustrating the diversity of offerings in maritime arbitration are two organisations, which are not institutions in the conventional sense, and which are sponsors of ICMA XXI, the Emirates Maritime Arbitration Centre (EMAC) and the Singapore Chamber of Maritime Arbitration (SCMA). Both advertise a hybrid model of arbitration with features from ad hoc and institutional. [7]

Maritime arbitration, then, comes in different forms, ad hoc, institutional and hybrid. Each has its advantages and will suit different parties in different circumstances. Parties relatively unfamiliar with maritime arbitration may, for example, prefer to have a non-specialist but respected institution supervise the process. On the other hand, parties may prefer the speed, costs savings and confidentiality which come with direct access to arbitrators in ad hoc arbitration. It is in the interests of all members of the international maritime arbitration community, and particularly of commercial parties, the users of arbitration themselves, that this diversity of offerings should be preserved.

Attacks on ad hoc arbitration

Our community needs to be alert to attacks on ad hoc arbitration, which are both deliberate and inadvertent, and which have been growing in recent years.

Ad hoc has demonstrably thrived, particularly for maritime disputes. Undermining its traditions and practices will harm maritime arbitration in the long term. It will also harm the wider international commercial arbitration community. If the media, opinion formers and the public associate international arbitration with just one type, promoted by a lawyer-led elite, the interests of the commercial users of arbitration will be at risk.

Ad hoc arbitration's enemies include:

- governments which introduce legislation more favourable to institutional arbitration;
- international organisations which, in promoting institutions, challenge the legitimacy of ad hoc arbitration;
- multinational law firms, whose partners sit as arbitrators and hold office in institutions, and who denigrate ad hoc arbitration;

- the arbitration and legal press, and associated directories of arbitrators and arbitration lawyers, which treat ad hoc arbitration as inferior to institutional; and

- universities which do not give ad hoc arbitration the attention it deserves in teaching and research.

I would not generally count arbitral institutions themselves among ad hoc arbitration's enemies. They are rivals. Competition with each other is healthy. It benefits both institutional and ad hoc arbitration. Furthermore, it is often one of the functions of institutions to promote arbitration more generally in the jurisdictions where they are located. Far from acting against the interests of ad hoc arbitration, institutions provide services which support it, notably in their role as an appointing authority. The President of the CAM-CCBC, for example, is competent to act as an appointing authority to nominate arbitrators in ad hoc arbitrations.[8]

This paper will discuss ad hoc arbitration's place in the international commercial arbitration landscape, its importance in maritime arbitration, and the ways in which it finds itself ignored, marginalised and/or discriminated against. It will also consider opportunities for it as technology changes the shape of arbitration.

In the meantime, it will call on delegates at this congress, in a spirit of solidarity, to take steps to protect ad hoc arbitration and to promote dialogue and understanding across all sections of the international arbitration community.

Ad hoc arbitration's place in the landscape of international commercial arbitration

International commercial arbitration: an inclusive definition

Maritime arbitration is the quintessence of international commercial arbitration. It falls squarely in the definitions of 'international' and 'commercial' in Article 1 of the UNCITRAL Model Law, footnote 2 of which confirms that 'commercial' should be given 'a wide interpretation' but specifically includes 'carriage of goods or passengers by... sea'.

The basic arbitration law, then, widely adopted worldwide, does not share the peculiar and exclusionary notion, promulgated by the arbitration press and by the legal directories, that maritime arbitration, central as it is to international trade, is not a form of international commercial arbitration but is something else. Explanations for this apparent absurdity can no doubt be found in maritime arbitration's scale, in the attention it receives in the shipping press, and in its traditional preference for arbitrators who are not partners in law firms, do not hold office in lawyer-led arbitral institutions, and who do not seek the sort of publicity which these publications sell.

Article 2(a) of the UNCITRAL Model Law confirms, '"arbitration" means any arbitration whether or not administered by a permanent arbitral institution'. The Model Law thereby seeks to legitimise arbitrations in which non-parties, namely an administering institution and its personnel, may become involved in a process which, in origin, is for the parties and their chosen arbitrator(s) alone. This wording also serves the opposite purpose, i.e. as a reminder,

in those jurisdictions in which institutional arbitration has become the norm, that ad hoc arbitration is equally valid.

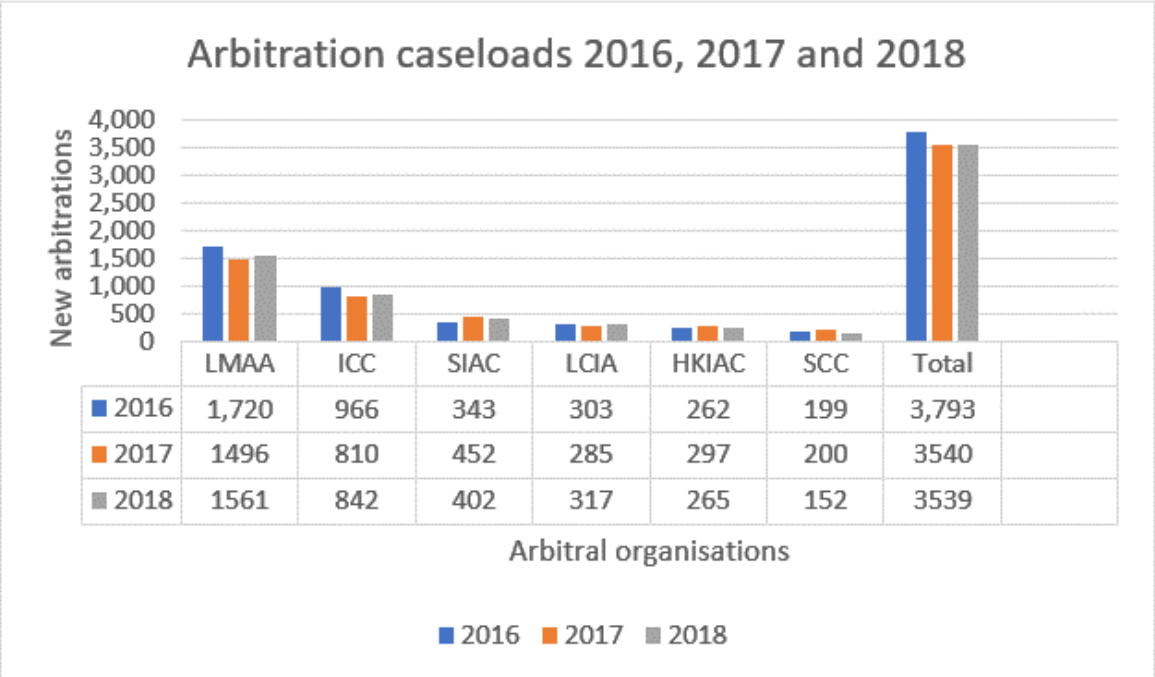
London: ad hoc outstrips institutional arbitration

London is the world's most popular seat for international commercial arbitrations, according to the White & Case Queen Mary University of London (QMUL) surveys.[9] English law remains a popular choice of governing law in a wide variety of contracts, including for the sale and purchase of commodities and for their transportation. As Lord Goff said, 'For the English, the characteristic commercial contract is a contract for the carriage of goods by sea.'[10]

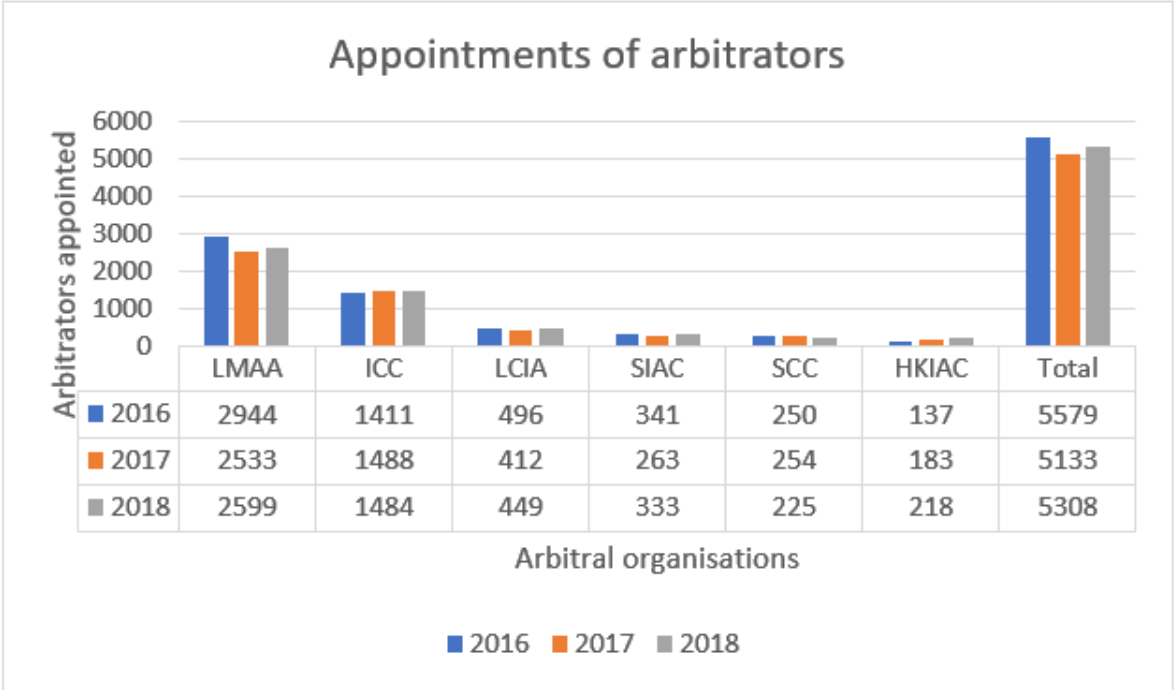
The distinguished authors of *London Maritime Arbitration* suggest in their opening chapter that their subject is a broad one and concerns 'arbitration taking place in London where the dispute involves in some way a ship – for instance a dispute under a charterparty, bill of lading, ship sale agreement or shipbuilding contract'.[11]

Maritime arbitrations may be ad hoc and/or they may be administered by institutions under their rules. For example, the London Court of International Arbitration (LCIA) receives Requests for Arbitration in shipping-related disputes from time to time.[12] However, most maritime arbitrations are handled on an ad hoc basis under the LMAA Terms. [13]

In London, ad hoc arbitrations outnumber institutional arbitrations by a very wide margin. In 2018, an estimated 1561 new LMAA arbitrations were commenced while, in the same year, the LCIA saw 271 new arbitrations under its rules (17% of the LMAA's number).[14] In addition, the LCIA provided administrative services in 46 ad hoc arbitrations, the tip of an iceberg of ad hoc non-maritime commercial arbitrations in London, most of which go unrecorded because they do not require institutional support. The International Chamber of Commerce (ICC), had 842 new arbitrations worldwide under its rules in 2018 (not much more than one half of the LMAA's number), of which 72 had a London seat.[15]



	LMAA	ICC	SIAC	LCIA	HKIAC	SCC	Total
2016	1,720	966	343	303	262	199	3,793
2017	1496	810	452	285	297	200	3540
2018	1561	842	402	317	265	152	3539



	LMAA	ICC	LCIA	SIAC	SCC	HKIAC	Total
2016	2944	1411	496	341	250	137	5579
2017	2533	1488	412	263	254	183	5133
2018	2599	1484	449	333	225	218	5308

Looking at the international picture, the graphs above illustrate that LMAA arbitrators handle many more arbitrations than the major institutions which respondents to the QMUL survey declared to be their favourites.[16] In 2018, the LMAA's estimated total number of references (1561) was exactly equal to the sum of the ICC's, LCIA's and SIAC's new cases added together.

In their seminal study of the sociology of international arbitration published in 1996, *Dealing in Virtue*, Yves Dezalay and Bryant G Garth note, 'The English legal profession has had to come to grips with the global practice of law and disputing, and with international commercial arbitration as recognized by the ICC community.'[17] As the statistics cited above suggest, London has not so much 'come to grips' with ICC arbitration as seen it off.

Nevertheless, the ICC is treated as the paradigm international arbitral institution: if it is not doing particularly well in London, that has been seen as a sign that London has been failing as a seat for all commercial arbitration, not that ad hoc arbitration, so often ignored by journalists, commentators and scholars, remains first choice in London.[18]

Maritime arbitration: not a world of its own

It is rarely acknowledged that the institutions have not succeeded in taking on as many cases, in the disparate fields which they service, as the arbitrators' associations and trade associations have managed to do in their business sectors.

In the controversial book which he co-edited with Professor Walter Mattli, *International Arbitration & Global Governance*, Thomas Dietz has an essay, *Does International Commercial Arbitration Provide Efficient Contract Enforcement Institutions for International Trade?*, in which he dares to suggest that the rise of international commercial arbitration, as administered by institutions, 'appears rather modest' while maritime arbitration associations

are 'very active' with the LMAA and SMA handling a 'significantly higher caseload' than all 'universal' arbitral institutions together.[19]

Dietz's approach is refreshing, even if his conclusions may be open to question. Too often non-institutional arbitration, ad hoc and (administered) trade association arbitration, is ignored and/or treated as inhabiting a different world from the 'ICC community'. Indeed, another university professor has described ad hoc shipping and commodities arbitration as residing in a 'parallel universe' to international commercial arbitration, encompassing construction, energy and investment cases.[20]

ICCA's task force on third-party funding, a collaboration with QMUL, decided to carve out maritime arbitration, as well as other forms of ad hoc and trade association arbitration.[21] In support of its exclusionary approach, the task force cited the White & Case QMUL international arbitration survey, which, it noted, together with 'related discussions in international arbitration', did not

> 'generally take account of practices in *ad hoc* and trade association arbitration, most notably in the maritime industry, which account for a large number of arbitrations every year.'[22]

P&I and FDD clubs, and their members, were entitled to breathe a sigh of relief at the task force's decision to exclude them.[23] However, the task force's rationale is questionable. Failures of inclusivity occurring in other fora cannot be reasons to follow and extend them. As others do, the task force assumed that maritime arbitration inhabited a world of its own.

Arbitral institutions, which usually treat all business sectors equally, do not take such an exclusionary approach. This is one reason why they have generally not adopted the task force's recommendations for the regulation of third-party funding in arbitration.[24]

The authors of *London Maritime Arbitration* likewise reject their subject's separateness:

> 'London maritime arbitration is sometimes treated as if it were distinct from "international commercial arbitration" seated in London, because this term is commonly used to describe commercial arbitrations administered by an institution. While there are differences, particularly in the strength of connection between some institutions and London as a seat of arbitration, these should not be overstated since both types of arbitration have much in common. They both relate to international commercial disputes and are subject to the 1996 Act. There is a significant overlap between the arbitrators, practitioners and parties who are involved in both.'[25]

Overlaps and knowledge gaps

As a former Registrar of the LCIA, I am more than conscious of such overlaps. It was my experience that law firms which were particularly active in LCIA arbitrations had shipping and insurance practices alongside other sector specialisms. Having experience mainly of ad hoc

arbitration, they looked with a critical eye at the LCIA's administrative services. Their scrutiny helped to ensure that the institution provided visible added value.

For users of arbitration from outside the UK, it may not be immediately obvious that 'arbitration in London', without an institution being named, means ad hoc arbitration. A Google search on 'London arbitration' will bring the LCIA to the forefront, even though the LCIA has only a small, if growing, proportion of London-seated international commercial arbitrations. Ad hoc arbitration has no spokespeople of its own and no public relations machines to guide new users to, and through, the process.

In 2008, I had been in post as Registrar of the LCIA for only a few weeks when I received a visit from two representatives of a Peruvian company, who had flown to London with a view to commencing an arbitration there. The arbitration clause in their contract with an Indian company provided, 'The arbitration shall be conducted in the UK in accordance with the provisions of the law in the UK in effect at the time of the arbitration and shall be conducted by one or more arbitrators appointed there under.'

I had to advise them that this was not an LCIA arbitration clause but I also suggested that they might wish to seek the other side's agreement to submit their dispute to arbitration under the LCIA rules. After all, an institution can provide guidance and support to parties unfamiliar with arbitration, whether generally or in a particular sector or jurisdiction.

Unfortunately, the Indian party did not agree to the proposal for LCIA arbitration and the case ended up in the Commercial Court in London after an arbitrator appointed by the Indian party became the sole arbitrator by default under the Arbitration Act 1996 and the Peruvian party challenged his jurisdiction. In the course of his judgment, dismissing the challenge, Mr Justice Burton, in the Commercial Court, said this:

> 'The claimant contends that articles 13 and 14 of the Distribution Agreement result in there not being a valid arbitration provision. This appears to stem from the reaction of Mr Clanchy of the LCIA. But the fact that Mr Clanchy advised Mr Zubiria that (without more) there would not be a sufficient arbitration provision to render an LCIA arbitration effective is plainly irrelevant, as it is common ground that the provision was not, and not intended to be, an LCIA arbitration provision, but on any basis there was to be an ad hoc arbitration; and in any event, even assuming Mr Clanchy was a lawyer and was authorised to speak on behalf of the LCIA, I am obviously not bound by any off the cuff advice by him.'[26]

Burton J's remarks are of interest for two reasons.

Firstly, the Peruvian claimant had not understood, or possibly even contemplated, that 'on any basis there was to be an ad hoc arbitration' when its representatives came to visit me at the LCIA seven years earlier.

For an English Commercial Court judge, ad hoc arbitration may be the norm and institutional arbitration the exception but a foreign user, new to London arbitration, can face difficulty in finding this out. [27]

Secondly, the judge's lack of knowledge about the LCIA, eg as to whether its Registrar was a lawyer (I was a solicitor), is not unusual in the Commercial Court.[28]

In *A v B* in 2018, Phillips J, on another jurisdiction challenge under AA 1996, s 67, held that an arbitration clause which referred, in Russian, to 'London international arbitration court' must be an agreement to ad hoc arbitration in London, not LCIA arbitration.[29] The judge found it at least doubtful that the parties would have intended to 'limit themselves to an LCIA arbitration' It was suggested that a choice of LCIA arbitration for a voyage charterparty dispute would be unusual but the LCIA's casework report for 2018 specifically includes disputes under charterparties and its data confirms that, amongst the wide variety of contracts in dispute in LCIA arbitrations, charterparties are no more unusual than shipbuilding, employment and intellectual property contracts.[30]

Claims for institutional arbitration's superiority and entitlement

Claims of thought leadership

English Commercial Court judges may be surprised to learn that 'thought leaders' on international commercial arbitration do not look as favourably upon ad hoc arbitration as they do.

According to Gary Born, whom his publisher describes as the world's leading authority on international commercial arbitration and international litigation and whose textbooks are widely used in university law schools, 'most experienced international practitioners decisively prefer the more structured, predictable character of institutional arbitration, and the benefits of institutional rules and appointment mechanisms, at least in the absence of unusual circumstances arguing for an *ad hoc* approach.'[31] Mr Born does not provide any data or references in support of this proposition.

Sundaresh Menon, the Chief Justice of Singapore, in his keynote address at the SIAC Congress on 17 May 2018, said this:

> 'Today, institutional arbitration has come to dominate the field. Perhaps with the exception of India, the evidence on the whole is that the vast majority of users prefer institutional arbitration.'[32]

The evidence on which he relies is the QMUL international arbitration survey. However, this survey does not reach a representative sample of users of international commercial arbitration. A substantial majority of its respondents may prefer, and be involved in, institutional arbitration but this does not reflect the actual use of the respective kinds of arbitration in the wider world.[33] It calls itself 'empirical' but this is an opinion survey amongst a group of respondents with varied amounts of experience of arbitrations in practice (even including nil), not a study of objective data such as the caseload statistics cited above.

Menon CJ goes on to claim, in his speech, that arbitral institutions have 'a prominent role in thought leadership'. Indeed, he asserts that institutions have 'not only a special role, but a duty, to shape the future of arbitration.'

This idea that the institutions are so important that they are entitled to make rules for the rest of the international arbitration community is found elsewhere. Notably, UNCITRAL, whose mission has been to establish rules for ad hoc arbitration that are acceptable worldwide[34], has had recourse to institutions in its current project on expedited arbitration, consulting them about their rules for such cases.[35] Working Group II might obtain a better result if it took a more inclusive approach. The success of the LMAA's Small Claims Procedure would be worth examining, for example.

Even independent associations of arbitration practitioners give institutions an exalted status. The Club Español del Arbitraje, in its *Code of Best Practices in Arbitration*, published in 2019, says: 'Arbitral institutions play a fundamental role in the promotion, performance and legitimacy of arbitration…'[36]

Halliburton v Chubb: institutions intervene in an ad hoc arbitration

In an appeal to the UK Supreme Court on a challenge to an arbitrator in an ad hoc Bermuda Form insurance arbitration, which was literally none of their business, the ICC and the LCIA, which each have their own rules, standards and internal procedures for dealing with conflicts and challenges to arbitrators, were not only granted permission to intervene but also to make oral submissions.[37]

The institutions purported to speak for the international arbitration community and claimed insights into its views of London as a seat, despite the fact they have only ever had a minority of the international commercial arbitrations in London. The ICC has said that the Supreme Court turned to it as *Amicus Curiae,* 'underscoring the ICC Court's standing as the global benchmark for international arbitration standards.'[38] Whatever one's views of the merits of the underlying case, the institutions' claims were questionable.

Failures of inclusivity in the international arbitration community

Assumptions about who is entitled to speak for the international arbitration community, and to make its rules, have been challenged for cultural insensitivity and failures of diversity and inclusiveness, for example by Professor Carlos Alberto Carmona, who has protested about the formulation of the IBA guidelines on conflicts of interest and on party representation and by Napoleão Casado Filho who has queried claims of consensus in relation to the regulation of third-party funding. [39]

Lack of sensitivity to users of ad hoc arbitration, and failures to include them in discussions of rules and guidelines, should likewise be challenged.[40]

Government and judicial action hostile to ad hoc arbitration

In recent years, assumptions about the superiority of institutional arbitration have been adopted by governments in major jurisdictions and have informed legislation, regulation and judicial decisions.

India

There has been a long tradition of ad hoc arbitration in India but dissatisfaction with aspects of it in practice, notably the prevalence and behaviour of retired judges as arbitrators, led the Modi government to introduce legislation which promoted institutional arbitration.

The highly successful, but still experimental, Mumbai Centre for International Arbitration (MCIA) had recently been established when the Prime Minister gave a speech on 23 October 2016 in which he said, 'Creation of a vibrant ecosystem for institutional arbitration is one of the foremost priorities of our Government.'[41]

In February 2019, this initiative was declared urgent and the government promulgated an ordinance for the establishment of a new international arbitration centre in New Delhi to be headed by a retired judge or other eminent person. The reforms in India have met with criticism from some prominent practitioners there, notably in relation to the levels of regulation and government interference.[42]

Russia

In Russia, the motivation for reform came from the opposite end of the spectrum, the proliferation of 'pocket' arbitral institutions which were not considered independent. However, the new legislation there also imposed restrictions on ad hoc arbitration.

Russian courts have been known to be sceptical about ad hoc. In 2018, a Russian commercial court held that an agreement for arbitration under the UNCITRAL Rules in London was invalid because it did not specify an arbitral institution to administer it.[43]

China

With some limited exceptions, China does not allow ad hoc arbitration, the basic rule being that parties have to select an institution to administer their arbitration. However, its courts recognise agreements for ad hoc arbitration at seats abroad and continue to recognise LMAA awards, for example.

In April 2019, the Supreme People's Court of the PRC and the Government of the Hong Kong Special Administrative Region signed an Arrangement Concerning Mutual Assistance in Court-Ordered Interim Measures in Support of Arbitral Proceedings by the Courts of the Mainland and of the HKSAR, which came into effect on 1 October 2019. There is a restriction on the type of arbitration in respect of which court support can be sought: it has to be administered by a recognised institution.

In Hong Kong, members of the HK Maritime Arbitration Group conduct ad hoc arbitrations under the HKMAG Terms, which are expressly based on the LMAA Terms. However, in order to bring such arbitrations within the ambit of the Arrangement, if required in a particular case, parties can use the HKMAG's 'Procedures for the Administration of Arbitration under the HKMAG Terms'.[44] The Procedures are short and cover the basics of administration by the HKMAG, notably as appointing authority in default of appointment(s) of arbitrators by the parties and as fundholder for advances on the tribunal's fees.

The future is disintermediated

The HKMAG's short Procedures for administered arbitration illustrate that there is no particular magic to it. The functions of institutions can be important in some arbitrations and the major institutions strive to add value.[45] However, their services may be of diminishing utility in an increasingly disintermediated world, i.e. a world in which modern technology is making administrators redundant.

As arbitration moves online, institutions will have less to do. It has been suggested that they will have a role to play in addressing cybersecurity risks.[46] However, such risks can be reduced when fewer players are involved. Parties and their arbitrators should be capable of dealing with them with the aid of secure platforms. Technology has the potential to enhance ad hoc's offering in this and other ways.

Conclusion

Ad hoc deserves to be recognised and to be treated as an integral part of international arbitration's future. It is incumbent on all of us, delegates at this congress, to do what we can to speak up for it.

I don't propose another pledge or promise of the kind that the international arbitration community has rightly embraced in recent years. Instead, I would simply urge everybody to keep ad hoc in mind, not only as a workable option in arbitrations, but also at conferences and other events, when completing surveys, and generally in conversations with colleagues, clients, students, and the media. The voice of ad hoc arbitration needs to be heard.

James Clanchy, FCIArb

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[1] The views expressed in this paper are entirely the author's own and are not necessarily those of his current or any former employer or of any organisation with which he is, or has been, associated.

[2] See the ICCA-ASIL Task Force on Damages: https://www.arbitration-icca.org/projects/ICCA-ASIL-Task-Force-on-Damages.html (accessed 4 January 2020). It aims to 'bring together a blue-ribbon panel of leading legal and economics experts from jurisdictions across the globe to think creatively about how to promote consistency and rigor in the field's approach to damages.' The damages studied appear to be those arising from failed projects, as discussed in the task force's seminar hat the International Centre for Settlement of Investment Disputes (ICSID) in Washington DC on 11 April 2017: https://www.arbitration-icca.org/AV_Library/ICCA-ASIL-ICSID/ICCA-ASIL-ICSID_5-Report_from_Working_Group_sessions_on_Procedural_Legal_and_Financial_Issues.html (accessed 4 January 2020).

[3] ICSID registered 56 new cases under its Arbitration Rules and Additional Facility rules in 2018: ICSID 2018 Annual Report (https://icsid.worldbank.org/en/Documents/resources/2018ICSIDAnnualReport.ENG.pdf). Its online tally of new registrations indicates that the total for 2019 was 38, its lowest number since 2014.

[4] https://www.arbitration-icca.org/about.html (accessed 4 January 2020)

[5] The Rt Hon Lord Justice Mustill, ICMA X, in *The Ten First Cedric Barclay Lectures*, eds Bruce Harris and Philip Yang, ICMA 2017, pp 11, 13 and 15

[6] https://icmaweb.com/ (accessed 4 January 2020)

[7] https://www.emac.org.ae/en/whoweare/AboutEmac (accessed 15 January 2020); https://www.scma.org.sg/ (accessed 15 January 2020)

[8] https://ccbc.org.br/cam-ccbc-centro-arbitragem-mediacao/en/appointing-authority/ (accessed 4 January 2020)

[9] https://www.whitecase.com/publications/article/2018-international-arbitration-survey-evolution-international-arbitration (accessed 5 January 2020)

[10] Lord Goff of Chieveley, "The Future of the Common Law" (1997) 46 ICLQ 745, 751

[11] Clare Ambrose, Karen Maxwell, and Michael Collett QC, *London Maritime Arbitration* (London, Routledge, 2017)

[12] LCIA annual casework reports can be downloaded at https://www.lcia.org/lcia/reports.aspx The 2018 report has 14% of new arbitrations in the 'transport and commodities' sectors.

[13] See, for example, HFW, 'The Maritime Arbitration Universe in Numbers: One Year On' (https://www.hfw.com/The-maritime-arbitration-universe-in-numbers-one-year-on , accessed 4 January 2020).

[14] LMAA statistics published on its website in March 2019: http://www.lmaa.org.uk/event.aspx?pkNewsEventID=208da443-7800-4720-84b3-7f4f3f5fc9ce (accessed 5 January 2020). LCIA casework reports can be downloaded at https://www.lcia.org/lcia/reports.aspx

[15] https://iccwbo.org/media-wall/news-speeches/icc-arbitration-figures-reveal-new-record-cases-awards-2018/ (accessed 5 January 2020)

[16] J Clanchy, LexisNexis Arbitration Blog, 'Arbitration statistics 2018: London bucks downward trends', 20 June 2019, https://www.lexisnexis.co.uk/blog/dispute-resolution/arbitration-statistics-2018-london-bucks-downward-trends (accessed 5 January 2020)

[17] Yves Dezalay & Bryant G Garth, *Dealing in Virtue*, Chicago, University of Chicago Press, 1996, 129

[18] Michael McIlwrath, 'An Unamicable Separation: Brexit Consequences for London as a Premier Seat of International Dispute Resolution in Europe', *Journal of International Arbitration, Special Issue on Brexit*, Vol 33, September 2016, 451-462

[19] Walter Mattli & Thomas Dietz eds, *International Arbitration & Global Governance*, Oxford, Oxford University Press, 2014, 192

[20] Prof Loukas Mistelis quoted in *Global Arbitration Review,* 6 May 2016

[21] ICCA-Queen Mary Task Force Report on Third-Party Funding in International Arbitration, *The ICCA Reports No. 4*, The Hague, April 2018, p9. The author was a member of the Task Force from 2016 to 2018.

[22] *Ibid*, p84

[23] See J Clanchy, *Regulation of arbitration: where it comes from, who it is for and its impact on maritime arbitrators*, ICMA XX, http://icma2017copenhagen.org/Presentations/CS8_Clanchy.pdf (accessed 16 January 2020)

[24] See James Clanchy, LexisNexis Arbitration Blog, 'Whatever happened to third-party funding in international arbitration?', 21 October 2019, https://www.lexisnexis.co.uk/blog/dispute-resolution/whatever-happened-to-third-party-funding-in-international-arbitration (accessed 5 January 2020)

[25] Clare Ambrose, Karen Maxwell, and Michael Collett QC, *London Maritime Arbitration* (London, Routledge, 2017)

[26] *Exmek Pharmaceuticals SAC v Alkem Laboratories Ltd* [2016] 1 Lloyd's Rep 239 at p245

[27] At least eight of the current judges in the Commercial Court have backgrounds, as barristers, in maritime and insurance arbitration, i.e. in ad hoc arbitration (Andrew Baker J, Bryan J, Butcher J, Cockerill J, Foxton J, Picken J, Teare J, Walker J)

[28] Eg *Filatona Trading Ltd v Navigator Equities* [2019] EWHC 173 (Comm): analysis of tribunal's powers dealt with the arbitration clause and the 1996 Act but did not look at the LCIA Rules.

[29] *A v B* [2018] EWHC 1370 (Comm)

[30] LCIA 2018 Annual Casework Report, https://www.lcia.org/LCIA/reports.aspx (accessed 12 January 2020). When LCIA members set out their specialisms for its database, 'charterparty' is one of the options in the contracts categories.

[31] Gary B Born, *International Arbitration* (Kluwer, 2009) Vol 1, 151

[32] Sundaresh Menon, SIAC Congress 2018, Keynote Address, https://www.supremecourt.gov.sg/Data/Editor/Documents/SIAC%20Congress%202018%20Keynote%20Address%20%20(Checked%20against%20delivery%20with%20footnotes%20-%20170518).pdf (accessed 11 January 2020)

[33] For a discussion of the QMUL surveys, see J Clanchy, review of the 2018 QMUL survey report in the LMAA Winter 2018 Newsletter

[34] UN resolution 31/98 cited in preamble to UNCITRAL Arbitration Rules 1976

[35] UNCITRAL Report of Working Group II (Dispute Settlement) on the work of its seventieth session (Vienna, 23-27 September 2019): https://undocs.org/en/A/CN.9/1003 (accessed 15 January 2020)

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