1. What is the tribunal appointment procedure that strikes the right balance between party control and arbitrator independence?

2. Selection of Arbitrators

When appointing a sole arbitrator in a dispute involving two different nationalities, the expectation is that the sole arbitrator will be of a third nationality with the view to ensure neutrality. How much consideration should there be with regards to the governing law when appointing this sole arbitrator? What if the governing law is of the country of one of the parties? Should the need for neutrality still prevail over the need for a more efficient procedure? Where to strike the balance?

3. The case for a non-lawyer arbitrator?

It is becoming rather rare to see non-lawyers (and even lawyers with other specialities besides arbitration / dispute resolution) being appointed as arbitrators, and the preference seems increasingly towards appointing arbitration specialists. Is this an inevitable trend which marks the progress of the arbitration practice in general, or are we losing one of the more traditional hallmarks of arbitration, which is that it promises a less judicialized method of dispute resolution method(flexible, less costly and more efficient) as compared to court litigation?

4. Why do non-institutional arbitral appointments remain concentrated among ‘the well-known names’? Despite increased size of the pool of well-qualified arbitrators on all dimensions, it appears that parties stick with well-known names, even where that may lead to increased delay. What are the reasons?

5. Why is more use not being made of 'screened' appointments of party appointed arbitrators?

Under a screened arbitration appointment system for a three-member tribunal, each party chooses the arbitrator it wishes to appoint however the arbitrator is not informed which party chose the arbitrator – the institution serves as the intermediary.
6. The challenged arbitrator

The arbitrator who is the subject of a challenge, either for failure to act fairly or impartially as between the parties, or for failing to conduct the arbitration with reasonable efficiency, diligence and industry, has the opportunity to “comment” on the challenge (see, e.g., LCIA Rules, art. 14.4; ICC Rules, art. 14(3)).

In commenting on the challenge, the challenged arbitrator may choose to do one or more of the following:

a) ensure that all facts relevant to the challenge are placed before the institution, body or person(s) called upon to determine the challenge;

b) make factual and legal submissions relating to the merits of the challenge; and

c) (imprudently) call into question the underlying motive for the challenge, or the *bona fides* of the challenging party.

The practice seems to vary considerably. What is the proper course for the challenged arbitrator to adopt?

7. Tribunal Secretaries

In principle, who should bear the burden of additional costs associated with the use of tribunal secretaries? There are various guidelines provided by different institutions, and many of them put the costs to the parties, subject to their consent. The issue is how to approach the parties for this consent. Sometimes the president/chair of the tribunal will directly contact the parties and ask for their willingness to bear the additional costs. When faced with this question, some parties may feel that they have no other choice but to consent (in fear of displeasing the decision-makers), but this could have been against the original expectations of the parties. Considering the impact that a request from the tribunal may have over the parties, should Tribunal refrain from directly asking the parties to bear additional costs associated with tribunal secretaries?

8. Despite all the recent discussion about seeking efficiency in arbitrations, there are many parties, often respondents, who have no desire for efficiency and in fact, for many reasons, would rather delay the proceeding as much as possible. What steps can a tribunal take to ensure the process moves along at an appropriate pace without incurring the risk of having an award challenged for lack of due process?

9. What benefits would come from adopting a rule that permits a tribunal to dismiss meritless claims at an early stage in the proceedings? Such a rule has potential for abuse, by a party seeking to delay the outcome of the entire proceeding or seeking some strategic benefit. How could such tactics be policed by a tribunal?
10. Due Process Paranoia: a vicious circle?

“Due process-paranoia” has been defined as “perceived reluctance by [arbitration] tribunals to act decisively in certain situations for fear of the award being challenged on the basis of a party not having had the chance to present its case fully”. The problem is that, as a result of this fear, arbitral tribunals tend to grant unreasonable procedural requests, thus unnecessarily prolonging the proceedings, which increases the duration and costs of the arbitration proceedings. However, does that not fly in the face of the notion that “justice delayed is justice denied”, which poses, once again, a problem of due process?

11. Due Process Paranoia.

12. Are the new procedural mechanisms in arbitration effectively reducing the duration and cost of the proceedings?

There is a growing trend in arbitration institutions and tribunals to include new procedural mechanisms in arbitration proceedings in order to increase their overall efficiency. Examples of these can be found in the new Rules for Expedited Procedures issued by the most important arbitral institutions, and in the creation of mechanisms such as the Case Management Conference or Mid Stream Conference, that can help the tribunal to understand the file in advance of the oral hearings. The question is whether these mechanisms have obtained the desired effect or, on the contrary, have increased the costs of arbitration proceedings.


How frequently is it successfully used? Does it generate more, rather than less, cost and delay? Does it create more risks for the process?


15. Expedited Procedural Rules to be adopted in to UNCITRAL Rules

UNCITRAL Working Group II discussed expedited procedural rule adoption to existent Rules at its last meeting in NYC, recently.

17. It seems that, more and more often, one of the parties to an arbitration (usually the respondent) asks the tribunal to bifurcate the proceedings, sometimes to consider objections to jurisdiction first, sometimes to delay considering quantum until liability has been established, sometimes for other reasons. Often it is argued that bifurcation promotes economy and efficiency, because it may be unnecessary to consider liability if the tribunal finds it lacks jurisdiction, and it may be unnecessary to consider quantum if the tribunal finds no liability. On the other hand, bifurcation lengthens the proceeding overall, and can add significant cost, if the arbitration goes all the way to a determination of quantum. Is there any way to establish whether bifurcation of a particular arbitration will or will not save time and cost?

18. The tribunal has rendered a partial award on Phase 1 of an arbitration. The parties have agreed not to proceed with Phase 2 while they engage in commercial discussions and technical procedures based on the Phase 1 Partial Award. Does the tribunal have any alternative other than to wait for the parties to agree to proceed with Phase 2? How long must the tribunal wait? Can a tribunal member retire from the tribunal at some point if, for example, other professional opportunities arise that may preclude the tribunal member from continuing to serve on the tribunal?

19. Non-compliance with agreed procedural rules

Parties seem increasingly willing to ignore agreed procedural rules (timelines, not limiting Replies and Rejoiners to responsive evidence/submissions etc). If confronted, the inevitable threat from the non-compliant party is to assert that a rejection of the relevant submission, pleading, witness statement etc would be to deny it a reasonable opportunity to present its case. Are arbitrators not to blame for the sorry state of affairs which we often find ourselves in?

20. The first CMC with the parties

Whatever happened to what used to be considered an all-important, in-person first meeting between the parties and the tribunal? Has its disappearance mattered, or do teleconference CMCs serve just as well?

21. How prescriptive should a Tribunal be regarding content of post-hearing briefs. It is common for Tribunals to set page limits and identify issues that they wish to be addressed in the post-hearing briefs. However, is it ever appropriate for a Tribunal to direct that it has heard enough on certain issues and does not want them covered in post-hearing briefs or does this go too far and risk an objection that they are not giving one or more of the parties a reasonable opportunity to present its case?
22. Transparency as a way to increase the efficiency of arbitration proceedings?

According to the 2018 International Arbitration Survey, conducted by Queen Mary University, users of international arbitration are increasingly interested in obtaining the following information when choosing an arbitrator:

- First, users wish to know more about individual arbitrators’ case-management skills and preferences, how proactive they are, and other details of their level of involvement in the decision-making process.

- Second, as the workload of arbitrators is increasing, respondents are interested in obtaining any relevant data that indicates the arbitrators’ degree of availability. Specifically, users would appreciate having knowledge of the number of, and more information on, their ongoing cases. Respondents also showed interest in data regarding the overall efficiency of arbitrators. References to the time spent on each previous arbitration (or the average duration thereof) and of the amounts of time that had elapsed between the closing of the proceedings and the rendering of the awards (or the average duration thereof) were particularly recurrent in the responses.

As is evident, all of this information can help the parties in arbitration proceedings to choose candidates who are more efficient in handling arbitration disputes, thus reducing the costs of arbitral proceedings.

23. Often the law applicable to an issue in an arbitration is not the law practiced by counsel for either side or by any of the arbitrators. Is such law best presented to the tribunal by counsel, or by an expert witness?

24. The Prague Rules

What are the panel's thoughts regarding the adoption and potential use of the Prague Rules?


26. Prague Rules vs IBA Rules

27. IBA Rules on Taking Evidence (Disclosure) are now largely ignored by the parties

The IBA Guidelines which were designed to place reasonable limits on documentary disclosure are referred to in virtually every PO No.1 in an international arbitration. They are now almost always ignored by the parties in their document requests. Presumably arbitrators are to blame. What is to be done?

What is sauce for the goose is sauce for the gander. If the international arbitration community is willing to abandon the compromise between common law and civil law approaches to taking evidence, then why not adopt a common law option?

29. The IBA Rules on the Taking of Evidence in International Arbitration are commonly adopted as guidelines in relation to document requests and disclosures, but often it may fairly be asked whether that amounts to much more than box-checking by the tribunal. Document requests rarely adhere to the letter or the spirit of the IBA Rules; they typically are broad, unspecific, and over-inclusive, and relevance and materiality are recited as mere boilerplate. The Redfern schedule format may make matters worse in that the responding party is allowed a single response and there is no built-in mechanism for refining or narrowing requests. What can and should be done?

(a) Should the tribunal outright reject non-compliant requests even if they may capture some relevant and material documents?

(b) Should the tribunal sua sponte narrow or refine such requests?

(c) Should a period for the parties to meet and confer about document requests be worked into the procedural timetable?

30. Cybersecurity and Data Security

How are cybersecurity and data security issues being addressed in arbitrations, if at all? Are counsel consulting and presenting an agreed protocol to the tribunal? Is cybersecurity appearing on the agenda for case management conferences? Are tribunals asserting any supervisory authority? Are the topics being addressed in procedural orders, e.g. in respect to data minimization or the masking of personally identifiable information? Have participants fully absorbed the impact of GDPR and similar statutes on the typical international arbitration?

31. GDPR (EU), Data Protection (elsewhere) may be an admissibility issue, other than a procedural issue in commercial arbitration?

32. Technology in Arbitration.

Do arbitrators need to become more technologically literate to address the technology issues which can arise in the document production process, the security of the electronic evidence exchanged or in computer modelling evidence for liability or damage issues?
33. Technology in Arbitration, new trends and what to expect.

34. Is the Arbitrator Intelligence Project fundamentally inconsistent with improving diversity? Aren’t the pale, stale, male arbitrators those most likely to have a track record adequate to make AI useful?

35. Recent trends and developments in damages

   What key trends can be discerned in recent years in IA damage quantification? Have certain approaches or methodologies tended to gain or lose favor? Are claimants, respondents, and arbitrators using economic experts differently than in the past?

36. How to handle experts efficiently?

37. How truly independent has an “independent” expert witness have to be.

38. Some tribunals are taking on more of an activist approach to reduce divergence between expert opinions by, among other things, requesting that both experts address the same set of issues, encouraging experts to confer and requiring the production of joint statements, and/or asking experts to prepare their reports on more than one basis, etc.. What are the downsides, if any, of such activist approach from the standpoint of the tribunal? Of the parties? If for whatever reason a party wishes to discourage the tribunal that has seemingly adopted such an activist approach, what can such party do? And at what risk?

39. How should a tribunal deal with obstructive or contumacious conduct where it is clear in the circumstances (or appears to the tribunal) that the conduct is that of the lawyers, not the party?

   (a) Does the tribunal possess the inherent power to sanction the lawyers or law firm (and/or could such power be included in the Terms of Reference or equivalent) and, if so, should it be prepared to exercise that power?

   (b) Should the tribunal in appropriate circumstances mention the lawyers’ offending conduct in the award, giving an implicit or even explicit signal to the party that hired them?

40. Should tribunals ordering provisional measures expressly qualify them as final awards, in that they dispose of a request for relief pending the outcome of the arbitration, to facilitate their enforcement under the New York Convention or national laws in jurisdictions that have not adopted Article 17H of the UNCITRAL Model Law (2006)?
41. With the LCIA and many other institutional rules now including provisions for interim decisions to be made by emergency arbitrators and Tribunals being called on to grant interim measures, is it time for a treaty (similar to the New York Convention) to provide a mechanism for recognition and enforcement of orders providing for interim measures?

42. Antisuit injunctions granted by arbitrators. Increasing or decreasing?

43. Good practice for drafting awards. Does the size matter?

44. Arbitral Appeals

Many arbitral institutions have adopted rules for expedited appeals of arbitral awards. Is the LCIA considering similar rules?

45. Publication of Awards

Some institutions (SIAC, ICC) have announced the intention to publish their awards. How might this affect the way that awards are (should be) drafted?

46. The rule applicable to ICC Arbitration regarding the publication of awards applicable since the beginning of 2019 has raised some discussion. Is it good or bad? Should the LCIA follow?

47. What are the warning signs that an arbitration is being used for money laundering purposes? What should an arbitrator do if she or he has any suspicions? Before appointment? In the course of the arbitration?

48. *Iura novit curia* – why not an arbitral panel? Should arbitrators reveal to the parties a (better) knowledge ... and then base the award on such legal opinion (although not pleaded by the parties)?

49. How do arbitrators decide? To what extend they attach to their sense of justice rather than to the mere application of the law?

50. The debate about “manifest disregard of the law” as a ground for annulment seems to re-appear: is it legitimate or an error in light of the NY Convention?
51. Duty of Non-Aggravation vs. Duty of Confidentiality: What are the limits to a party repeating allegations of misconduct by the other party on social media or in press releases (even if the specific allegations are not caught by the confidentiality provisions of the LCIA rules or the contract)? If there is an implied duty of non-aggravation that goes beyond confidentiality, what is the legal source of that duty? Is it in an implied term of the contract/treaty, the arbitration rules or some extra-contractual obligation (e.g. restraint of defamatory statements)?

52. Is the end nigh for investor state arbitration? In light of Achmea and the Member State declarations to bring to an end intra-EU investment treaties, and the Trump administration's dislike of ISDS, does investor state arbitration have a future?

53. The Achmea decision purports to distinguish international commercial arbitration from investment arbitration (including on the ground that international commercial arbitration is premised on “consent”). Can the Achmea decision really be limited to investment arbitration, or does it jeopardize international commercial arbitrations seated in EU member states as well?

54. Will Brexit hinder or help arbitration in the UK? As no meeting involving anyone from the UK can be complete without Brexit raising its head, does the arbitration community think that it presents challenges or opportunities? What are these? Who will benefit and who might lose out?

55. Haven’t hurdles dramatically increased regarding the enforcement of awards against States? Laws protective of States’ interests have been implemented, States have become more experiences in resisting enforcement, etc. If this remark is shared by the conference participants, what could be done?

56. Peculiarities when one part if a Public Entity or a State.

57. What can be done to foster amicable settlement of disputes?

58. Is it ever appropriate for a tribunal to suggest to the parties that they should attempt mediation, or even to ask them if they have considered it (or indeed whether they have already attempted it)?

59. Third Party Funding

Does the LCIA have a position with respect to the mandatory disclosure of the existence of a third party funders of some or all of a parties’ arbitration costs and legal fees? If so, what must be disclosed, and when must it be disclosed?
60. Is international arbitration immune from the waive of protectionism sweeping world economies? Will we see an increase in attempts to limit the extent to which counsel and arbitrators qualified in jurisdictions other than the seat can participate in arbitrations? Even if there are not direct restrictions, will impediments like the need for work permits make it harder for non-national lawyers to participate in hearings?

61. Why are more international arbitrations not taking place in Canada?

By any measure, Canada ranks high on the attributes for a strong seat and venue for international arbitrations. While it appears that there has been significant growth, why are parties not choosing Canada more often?

62. The globalisation of international arbitration: the coming of age of arbitration in Africa?

As international arbitration becomes more and more global, new regions are starting to emerge as potential hubs for arbitration practice. The region perhaps attracting most attention nowadays is Africa. One clear example of this is the creation of the African Arbitration Association in June 2018, which will host its first Annual Conference from 1 to 4 April 2019. Will these actions be the beginning of a new globally renowned arbitration hub?

63. Arbitrability in USA. (In Henry Schein, Inc. v. Archer White Sales Inc. by Supreme Court of the US, it is argued that the parties had clearly and unmistakably agreed to arbitrate arbitrability by incorporating into their agreement the AAA Rules, which—like the rules of other major arbitral institutions—contain a delegation provision)

64. What is the proper role for the Tribunal in regard to Technology Assisted Review (“TAR”) and other methods applying Artificial Intelligence to the gathering of documents?

65. There have been a number of recent investment cases where illegal expropriation has been found and where arbitral tribunals have awarded sunk costs to claimants. Under the treaties the standard is generally, the fair market value of the investment immediately before the expropriation and damages more generally are subject to the principle of “full reparations” under the Chorzow Factory case. Generally, sunk costs meet neither of these criteria. Are arbitrators properly applying the principals of damages in these cases?

66. Inspired by the example of the SICC, several countries in Europe (in their case due to Brexit considerations) but also elsewhere, have favored the creation of international judicial courts. What do these courts need to be successful? Could they offer an alternative to arbitration and respond to certain criticisms, essentially focused on investment arbitration but that have also affected commercial arbitration (in short, professional judges, publicity of decisions).
67. UNCTRAL Working Group III. Reform, now? Incremental, Systemic or Paradigmatic Reform of Investor-State Arbitration?

68. Reform on ISDS

Although this is a pure international investment arbitration topic rather than commercial, users may want to know what are future impacts of Reform process on international commercial arbitration?

69. ICSID Rule Amendments. Modern, Simple, Effective?

70. ICSID Rule amendments

In related to 2. topic, ICSID, as a part of ISDS mechanism, has taken an important step at the fourth amendment of the Rules in last year. What is the schedule for next step(s)?

71. USMCA. Skinny ISDS between US and Mexico, inter-State dispute settlement between US-Canada?