

INNOVATION IN ARBITRATION



ARBITRATION INSTITUTE
OF THE STOCKHOLM CHAMBER OF COMMERCE



FOREWORD

THE CONTINUED SUCCESS of international arbitration in the 21st century will rely on our ability to develop innovative and visionary techniques to meet the challenges of the future.

With this in mind, the Swedish Arbitration Association (SAA), Young Arbitrators Stockholm (YAS) and the Arbitration Institute of the Stockholm Chamber of Commerce (SCC), gathered more than 300 international practitioners in Stockholm on 8 March 2012 for an event entirely devoted to Innovation in Arbitration.

This report shares discussions and conclusions from the seminar, which developed into a very inspiring afternoon.

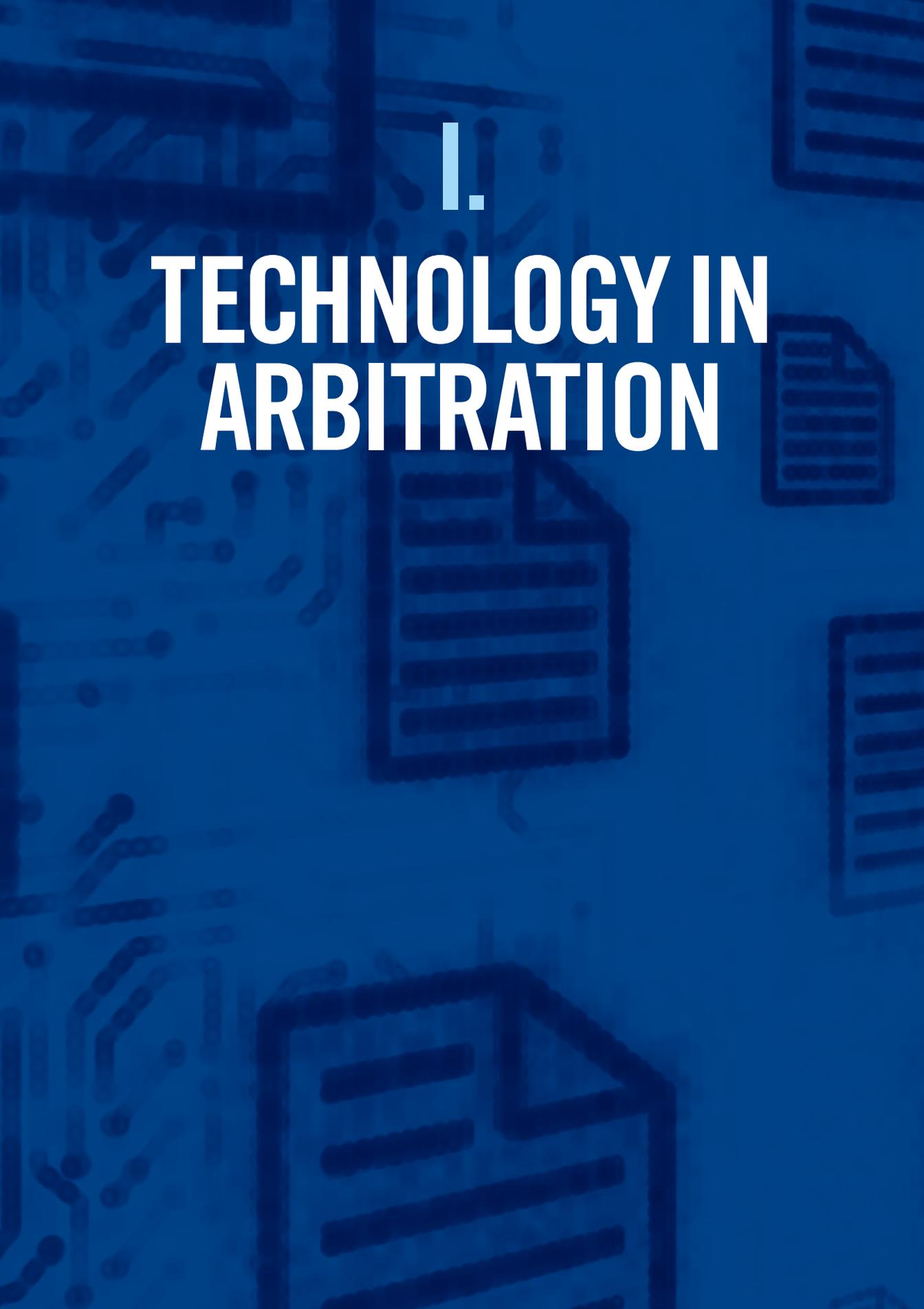
In her opening speech, Ms. Ewa Björling, Swedish Minister for Trade, reminded the audience on the necessity to adapt to a fast-changing world – and to take advantage of new opportunities.

Experience, hard facts and creativity were key ingredients as the panelists thereafter freely discussed topics vital for the future of arbitration. We are truly grateful to the speakers and participants for their generous contributions of insights and knowledge.

Innovation in arbitration is of course an on-going process. So we welcome you to join us, as we continue to explore how to turn challenges into opportunities for international business in the use of international arbitration.



ANNETTE MAGNUSSON
SCC SECRETARY GENERAL

The background is a solid blue color with a pattern of faint, white icons. The icons include several document symbols with horizontal lines representing text, and several circuit board symbols with lines and dots representing components and connections. The icons are scattered across the page, creating a technical and legal atmosphere.

I.

TECHNOLOGY IN ARBITRATION

IN RECENT YEARS, use of information and communication technologies has developed rapidly with progress in those technologies. E-mails have been outdated by more interactive social media such as Facebook, Skype and Twitter. “If Facebook were a country, it would be the third largest country in the world after China and India”, observes Mark Kantor. As a consequence, in today’s business world an increasing amount of data is stored. Some call it “information inflation” or “information hyper-flow”. Regardless of the terminology, this is an opportunity for creative counsel to access more information and thereby gather evidence in support of their cases.

International arbitration needs to face these new developments and take full advantage of them. Skeptics might fear that, due to the immense amount of stored data, e-discovery will lead to an excess of costs and time. An inquiry amongst conference attendees confirmed that fear: When asked if they thought that new technologies would lead to an increase in costs and time, the majority of the audience raised their hands and agreed – but is this really true? Or can technology serve to promote innovation in our legal services?

The first conference panel consisting of Domitille Baizeau, Partner at LALIVE, Geneva, and Mark Kantor, an Independent Arbitrator from Washington D.C., tried to answer these questions in a discussion moderated by Robin Oldenstam, Chairman of the SAA and Partner at Mannheimer Swartling Advokatbyrå, Stockholm.

Increasing the value. Domitille Baizeau discussed the use of new technology as a case management tool, by utilizing e.g. virtual/ electronic/ digital files, platforms, data rooms and paperless/ paper-free hearings. By resorting to services such as the

ICC NetCase and WIPO ECAF, parties can enjoy advantages of time and cost savings, increased accessibility (anywhere, anytime) and search and support facilities for electronic exhibits and interactive documents.

Risks. In the short term, however, smaller law firms in particular may risk facing more costs, as they might lack the necessary financial and technical resources to utilize new technologies. Nevertheless, Mark Kantor suggested that these costs might be reduced by alliances between smaller law firms and outsourcing to specialized companies. Additionally, when using electronic files, counsel and arbitrators should always ask themselves if printing can really be prevented or if using electronic files risks creating double work, as some counsels and arbitrators simply feel uncomfortable reading all documentary evidence on a monitor. Other risks in relying on new technologies include knowing the quality of the technology relied on and the potentially unequal access to new technologies between the parties. If one party has far greater access to technological advancements, this factor could lead to due process issues and endanger enforcement of arbitral awards. Finally, by having too many possibilities to access



**“ AS PARTIES
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►► too many documents, there will always be a risk that a file remains untouched. It has to be borne in mind that a good idea is always only as good as its users.

New opportunities. New technological means also permit paperless and/or paper-free hearings. A virtual hearing bundle as well as a real time transcript can lead to better use of exhibits and may be useful for drafting the award more quickly. Nevertheless, all these means have to be used carefully, as flipping through electronic documents might be distracting when listening to witnesses at the same time.

Do we still need physical hearings?

Or does the future lie with online dispute resolution (ODR)? In the coming months, the First Universal Virtual International Arbitration Centre (FUVIAC) in India will be released – an entirely virtual platform for dispute resolution. The European Union also seems to favor ODR. Recently the European Commission suggested creating an EU-wide online platform for resolving consumer disputes concerning purchases made online in another EU country. Moreover, UNCITRAL has established a working group on online dispute resolution. Obviously ODR not only saves time and costs, as for example, no travel expenses are involved, but it also increases flexibility. On the other hand, while heavy expense and poor quality in initiating ODR services will be only temporary issues, some issues, such as how to prepare certain witnesses, will remain. In the end, however, reducing physical hearings might be a new way to meet the growing disappointment of businesses with the deteriorating time and cost efficiency associated with arbitration.

Institutions need to take the lead and encourage the parties to use platforms pro-

viding these services. It is vital, however, that institutions are told by counsels what is required, so that relevant resources and means can be provided and are in fact used.

Case by case analysis. “Will technology really help my case and will it really save costs?” is the ultimate question that counsels should ask themselves when preparing a case. The answer to this question lies in the decision makers. The usefulness of technology depends on the arbitral tribunal’s comfort level with technology.

The new era of telecommunication-related data.

As parties have moved to digital means, counsels and arbitrators need to do this as well. With ever more data being produced, the volume of electronic evidence also increases. Many counsels have likely wished that they could control their clients’ free use of Blackberries. Problems arise from dual-use technical devices that are owned by the employer and made available for employee use. Who owns the data and to what extent is it protected through privacy? An attempt to address these issues is found in the 2010 IBA Rules on the Taking of Evidence in International Arbitration, which in anticipation of technological developments give the word “document” a broad understanding, including electronically stored information.

Expectations of privacy. Data exportation to other countries occurs on many occasions in international arbitration. This export creates numerous privacy issues. For instance, individuals waive or consent to loss of privacy only when specific legal requirements are satisfied; requirements that counsels and arbitrators will need to examine carefully when determining if private information can be accessed. Prob-



Mark Kantor.

“ THE USEFULNESS OF TECHNOLOGY DEPENDS ON THE ARBITRAL TRIBUNAL’S COMFORT LEVEL WITH TECHNOLOGY ”

lems likewise arise regarding the ownership of data: Who owns the information? For example, does the subscriber of a cell phone service or the owner of the cell phone company own the related data?

Other issues can arise out of a document request: Are Meta Data and/ or log files included in the request? All these issues will have to be dealt with on a case-by-case basis taking into account all relevant circumstances.

Clouds. Another issue is the movement towards clouds for online data storage. Again the challenge is to reveal who owns the data and information in the cloud. The cloud is – so to say – “someone else” and therefore a third party. So it is vital to know how these databases work and what they are called, in order not only to request the information stored there, but also to communicate this information to the arbitral tribunal.

Reaching out to third parties. How can an arbitral tribunal order a third party to produce electronic information? Usually arbitrators lack the power to subpoena third parties or their documents for discovery. But when issuing procedural orders for document requests certain regulations, such as privacy laws and stored communications acts, also have to be considered and respected. In the European Union, for example, privacy law changes rapidly. On only 25 January 2012, the European Commission unveiled a draft for both a new European Data Protection Regulation and Directive. And, according to Arts. 25 ff. 95/46/EC, before most personal data may be transferred outside of the European Union and the European Economic Area (EEA), an assurance that the level of data protection provided by the recipient is ade- ►►

▶▶ quate compared with standards set by the European Union is required. In the United States, access to stored electronic communications is generally prohibited under the U.S. Stored Communications Act unless the communicator consents to disclose the information. As most institutional rules require arbitrators to act with a view to render enforceable awards, arbitrators must be up to date with these changes and requirements. Careful examination is required to establish whether a third party (including remote computing service providers) can lawfully provide information so that the award is enforceable at the end of the day.

28 U.S.C. § 1782. The panel also referenced 28 U.S.C. § 1782, which permits a U.S. federal district court to order discovery of evidence for use in proceedings before a foreign tribunal. The debate over this provision was sparked in the Chevron-Ecuador case, where Chevron requested a federal district court in New York to order the production of outtakes from a documentary film. Since then, additional U.S. courts have granted judicial assistance in arbitration cases under Section 1782, applying an American standard to determine the scope of discoverable evidence. This standard can be far broader than the standard in the IBA Rules on the Taking of Evidence in International Arbitration, which requires documents to be relevant and material to the outcome of the case.

An evolutionary process. The panel also discussed how production-friendly arbitrators are to granting requests for the production of evidence. Only a few years ago, the question of what information had to be revealed during a discovery phase focused on the limits of searching a personal computer. Today, however, issues, such as

e-mail production, depend heavily on the arbitrators and their backgrounds. Some arbitral tribunals will be reluctant to grant and take electronic evidence and will only accept hard documents, while others will be more open to accepting electronic evidence. Some arbitrators will think that production in this way is simply not valuable, especially if a request is too broad. Mark Kantor pointed out, however, that whether evidence is in digital or paper format is not decisive on the case's outcome. What is decisive is whether the arbitral tribunal thinks that the evidence, for example, a contract's drafting history, is persuasive in establishing the facts of a case. "The issue is not the nature of the device supporting the information, but the scope", comments Domitille Baizeau.

Mark Kantor's "to do" list for counsel:

- 1.** Teach yourself (by taking technicians out to lunch) and the arbitral tribunal the language of these new techniques.
- 2.** Educate yourself and the arbitral tribunal in privacy law.
- 3.** Do 1. and 2. before opposing counsel does it!

It's up to counsel. So in the end, counsels are taking the lead when it comes to how the new wave of information technologies will impact arbitration. ■

INNOVATION AT THE SCC

The SCC uses innovation to greater meet the needs of its users and the international arbitration community. Learn more about some of these recent initiatives.



Emergency Arbitrations

The SCC was one of the first institutions to provide parties with a means for pre-arbitral relief.

For more information:
<http://www.sccinstitute.com/skiljeforfarande-2/emergency-arbitrator.aspx>



Swedish Arbitration Portal

This innovative tool provides the international community with free English translations of Swedish court decisions.

To access the portal:
<http://www.arbitration.sccinstitute.com/Swedish-Arbitration-Portal/>



SWAN Member Directory

This compact directory promotes women in arbitration and highlights SWAN members as potential counsel and arbitrators.

To view the directory:
http://www.sccinstitute.com/filearchive/4/43679/SWAN_directory.pdf



II.

INNOVATION: CLIENTS AND COUNSEL

IN ORDER TO RESPOND to the challenges of international arbitration, clients and counsels resort to innovative techniques. Procedural protocols, teamwork between in-house and external counsels and law firms' compensation systems were some of the techniques discussed during the second session by a panel composed of David W. Rivkin, partner at Debevoise & Plimpton, New York, Peter J. Rees QC, Legal Director of Royal Dutch Shell, The Hague, and moderated by Annette Magnusson, Secretary General of the SCC.

“A public statement about the need for efficiency in arbitration”. This is how David W. Rivkin describes the “Debevoise & Plimpton LLP Protocol to Promote Efficiency in International Arbitration”. The Protocol is a pioneer initiative of the Debevoise & Plimpton dispute resolution group to provide tailor-made arbitral proceeding services to its clients.

In 25 specific procedural measures, the Protocol expresses a strong position of the firm and its clients about how to save time and reduce costs in arbitration. The Protocol is not a standardization of all cases. On the contrary, it expresses a commitment on how to handle and approach each case according to the needs of the particular client.

The Debevoise Protocol is an innovative tool to approach the client in a consistent manner. Serving as a guideline, clients know what services to expect from a law firm and what services they are paying for.

In addition, the Protocol facilitates teamwork at all levels. The client's in-house and external counsels, the opposing party and also arbitrators can refer to it as a common basis to approach arbitral proceedings. “To set out these procedures is useful for everybody”, states David W. Rivkin. Thanks to the Protocol, lawyers enjoy a stronger position before opposing counsel.

David W. Rivkin.



Lawyers are not showing weakness when suggesting negotiations to the opponent, as negotiations are part of their mandate in the Protocol (Points 23-25 of the Protocol). David W. Rivkin encourages law firms to issue these protocols, as “it is easier to represent our clients if other firms adopt the same procedures”, he says. “We can refer to the Protocol when dealing with our cases and the opposing party”.

Teamwork in arbitration. In-house counsel – usually inexperienced in arbitration – work together with external counsel in managing international disputes. From the client's perspective, a major challenge is consistency. That is, how in-house and external counsels, as a team, can adopt the same perspective when managing cases. ►►

►► Peter J. Rees knows about these challenges. Rees was appointed Legal Director of Shell in 2011. Before that, he spent about 20 years as external counsel. For most of that time, he worked as Head of Dispute Resolution at the international law firm Norton Rose and in 2006 joined Debevoise & Plimpton in London as a partner.

Peter J. Rees explains that teamwork is how global companies should address challenges to their in-house and external counsel. “Shell is a typical example of an integrated global company”, he declares. “Shell does everything from getting oil to selling it. As a consequence, Shell deals with lots of disputes and with a lot of the same issues all around the world”. In fact, Shell started its own global dispute resolution group in order to be able to monitor the roughly 8,000 disputes that Shell has around the globe.

In order to be more consistent in handling their disputes, Shell’s strategy is to coordinate efforts between in-house and external counsel. For that purpose, some of the tasks traditionally associated with external counsel should be in the hands of in-house counsel, which is in a better position to share information with external counsel. For example, e-discovery is a task that Shell’s in-house counsel has taken over. Teamwork is an issue which Peter J. Rees and David W. Rivkin find decisive in achieving efficiency. For that purpose, initiatives such as the Debevoise Protocol are useful to give in-house and external counsels a common working basis.

Case assessment in arbitration: Time and costs are manageable. Another innovative measure to achieve efficient arbitral proceedings and coordinated teamwork with external counsel is to train in-house



Peter J. Rees
and Annette
Magnusson.

“ PARTIES SHOULD REQUEST ARBITRATORS TO ALLOCATE THE COSTS OF THE ARBITRATION TAKING INTO ACCOUNT WHETHER THE SUBMISSIONS OR STEPS TAKEN BY A PARTY WERE REALLY NECESSARY OR MERELY DILATORY ”



counsel in case assessment. Peter J. Rees stresses the importance of introducing proceedings to monitor the costs of a dispute. “I believe that all disputes can be valued”, he opines. In order to do so, in-house counsel should develop the theory of the case early and promptly analyse the elements of each specific dispute. “External counsels need to be part of that process”, notes Peter J. Rees.

“Be upfront”, affirms David W. Rivkin. Putting the right issues in the case first is an initiative that saves time and costs in arbitral proceedings. Here, as Peter J. Rees mentioned, an early case assessment is essential. David W. Rivkin agrees from his perspective as external counsel and advises all lawyers to start each case with a blank piece of paper and to tailor the proceedings to each dispute and client and “not simply

to adopt procedures that follow the format of prior cases” (Point 6 of the Protocol).

For that purpose, internal and external counsels need to have a strong view on a case from the very beginning. They need to know the decisive issues from the start. To put this into practice, Point 5 of the Protocol advises including a detailed statement of claim with the request for arbitration, if possible. A detailed statement of claim allows a prompt briefing schedule.

Arbitral tribunals can also contribute to cost management. Parties should request arbitrators to allocate the costs of the arbitration taking into account whether the submissions or steps taken by a party were really necessary or merely dilatory.

Individual quality matters. For a client such as Shell “the quality of the legal individual is what matters”, avers Peter J. Rees. Clients focus more on individuals than on law firms. They are looking for the best person. “The best person is a team player willing to work with the client’s in-house counsel and willing to spend plenty of time in planning the dispute”, emphasises Peter J. Rees.

Moreover, when choosing external counsel, clients should consider the law firm’s compensation model. “Lockstep leads to effective teamwork”, asserts David W. Rivkin. This is because the firm’s overall yearly success is averaged out to determine a standard compensation rate for each associate at each level of experience; whereas the “eat what you kill” system does not necessarily lead to the best service for the client. Lawyers are rewarded on how much business they personally bring in. That is, lawyers are willing to undertake cases not necessarily based on their expertise in the subject matter of the dispute, but rather on the deep pockets of the client. ►►

►► **Quid pro quo.** Efficiency depends on the arbitrators' flexibility. An early case assessment can be effective only if arbitrators are open to first hear the preliminary issues that parties put forward. Parties want more active, more efficient arbitrators. In turn, arbitrators have understood that future appointments depend on their ability to show that they can handle cases efficiently and render the award on time. However, an expeditious resolution of the dispute is possible only if arbitrators are in fact available. This is why Point 1 of the Protocol recommends, before appointing arbitrators: "ask them to confirm their availability for hearings on an efficient and reasonably expeditious schedule".

Such a simple measure has a direct practical impact on the efficiency of the proceedings. If arbitrators are available, clients can request a commitment to render an award in a matter of months. Point 2 of the Protocol promotes asking for arbitrator commitment to issue an award within 3 months after the merits hearing or post-hearing briefs, if any.

Clients can do more. Peter J. Rees stresses that clients can do more to save time and costs in arbitration:

- "Case management starts with risk management". Clients should negotiate better arbitration clauses and include them in the contract.
- It is not necessary to always have party-appointed arbitrators. Appointment could be left in its entirety to arbitral institutions.
 - Use a sole arbitrator for small disputes.
 - Reconsider whether the case really requires a hearing.
 - Clients should insist on the availability of arbitrators so that awards can be issued quickly.
 - Clients should emphasize that they

do not need the whole history of the case. Arbitrators could then render shorter awards.

Settlement consideration. Given the time and cost spent on arbitration, the will for mediation is greater. Measures which make arbitration more efficient and facilitate settlement are:

- Set clear settlement rules on the table from the beginning.
- Investigate settlement routes either from the outset of the case or after exchange of submissions.
- When appropriate, ask arbitrators to provide preliminary views that could facilitate settlement.

In conclusion, in order to face the challenges of international arbitration, internal and external counsel need to coordinate efforts. Law firms should consider adopting protocols for case management and review their compensation systems. Teamwork is fundamental for finding a consistent approach that serves the client. Finally, an early case assessment is essential to save time and costs during arbitration proceedings. ■

III.

**INNOVATION:
A CLIENT'S
WISHLIST
- DOES MODERN
ARBITRATION
MEET CLIENT
EXPECTATIONS?**



►► **IN THE FINAL SESSION**, a panel formed by Matthew Secomb, Partner at White & Case, Paris, and Joanne Cross, Managing Counsel BP, London, moderated by Pontus Ewerlöf, Board Member of YAS and Senior Associate at Cederquist, Stockholm, tried to shed light on the degree that modern arbitration meets client expectations. To do so, the panel gave examples of and discussed a client's wish list, and then focused on how innovation can fulfill those wishes.

The issues at the heart of the discussion were how to tailor procedures, achieve a speedy resolution and engage arbitrators in a case. The panel also touched upon the issue of interim measures.

Winning within a week? A rapid procedure comes first on a client's wish list, notes Matthew Secomb. Following that, he says clients also want "the costs for the legal proceedings to be reasonable". Last but not least, "clients also desire a well-reasoned award", adds Matthew Secomb.

Tailoring. Flexibility is fundamental in dispute resolution. Arbitration in itself has given much freedom to the parties to tailor the procedure according to the needs of their dispute. Hence, it is up to the parties to come up with their specific wishes, which may then give way to new practices in the field of arbitration. "There is a need to make use of this flexibility in order to innovate", declares Matthew Secomb. Much weight is put on the necessity of both counsels and arbitrators leaving behind the fear of new things and unpracticed methods. Practitioners are encouraged to be braver in taking new steps and welcoming unprecedented ways in approaching the issues.

"Innovation cannot be found by saying we need more flexibility, since the ultimate flexibility is already given by arbitration",



From left:
Matthew Secomb,
Pontus Ewerlöf
and Joanne Cross.

“ SINCE ARBITRATION ALREADY POSSESSES FLEXIBILITY, ALL WE NEED TO ACHIEVE INNOVATION IS FOR THE PARTIES TO BE BOLD AND OPEN TO NEW THINGS ”



observes Matthew Secomb. An example of that flexibility is the SCC Rules themselves, which leave most of the issues open to the parties to decide. In tailoring the procedures, the arbitration community is invited to unleash the flexibility of arbitration. In so doing, it is important to differentiate between the needs of different clients. One client may have 20 disputes to be settled, whereas another may only have one. The needs of each client differ substantially; consequently, tailoring the procedure will differ too.

The need for fair process and efficiency is not to be overlooked, however, in adopting new procedures. The tribunal's attitude is crucial in this regard.

Brave arbitrators. When coming to a conclusion, arbitrators should not consider non-enforcement or worry about securing future appointments. Rather, they should be courageous enough in implement-

ing these untested ways so that they may achieve innovation in arbitration. "Flexibility is half of innovation", agree the panelists. Since arbitration already possesses flexibility, all we need to achieve innovation is for the parties to be bold and open to new things.

Speed=Costs. Costs and speed go hand in hand in arbitration. The longer it takes for the tribunal to reach a decision, the more expensive it becomes for the client. A party trying to slow down the proceedings is not uncommon, but it is quite hard for arbitrators to know the parties' intentions and to spot a party delaying the process on purpose from the outset of a case. The panelists proposed sanctions against a party trying to delay the proceedings, a proposal already adopted by some institutional rules. Arbitrators also need to exercise greater power in this respect to keep the arbitration moving forward and to utilize wide discretion in limiting or excluding evidence, for example, expert questions or witness testimony, which is utterly irrelevant or unnecessary.

Setting a timetable can be a hard task, since one party may insist on one month, whereas the other stubbornly argues for three. A solution to this, when circumstances allow it, is that when no counterclaim is involved, the respondent should follow the suggested time limit. For instance, if the claimant agrees that a month would be sufficient for the case and the arbitrator regards this as reasonable as well, the respondent should make it easy for all by following the proposed timetable. Further, it is agreed that, when parties are looking for an extension of time, they should ask for this as early as possible in order to prevent delays in proceedings. In addition, an extension of time should



- ▶▶ not exceed 10%, so if a deadline is within 30 days then only 3 more days should be given.

Punctuality in rendering an award.

Another significant point is prompt rendering of an award. The suggestion was made to issue a monetary punishment against arbitrators if they are not able to deliver the award on time. This could be effected by reimbursing the parties a percentage of the amount received by the arbitrators for the task they have been assigned. Yet this suggestion, while it may be welcomed by parties, does not seem to be promising from the standpoint of arbitrators who may be protective of their fees and reputation.

Committed arbitrators. The panel lamented that some arbitrators tend to avoid full engagement in the arbitration until the first hearing. The need for arbitrators to be willing to engage in arbitration from a very early stage was strongly stressed. Attention is drawn to point 25 of the Debevoise Protocol, in which arbitrators will be asked to provide preliminary views on when facilitating settlement is appropriate.

When encouraging arbitrators to engage earlier in the merits, the risk is that the case will be prejudged from the beginning. There is also an argument, however, that this might sometimes be better because if something is not understood by arbitrators or is unclear or ambiguous, the parties will have the opportunity to clarify the matter.

Arbitrators' busy schedules. "It is not enough that arbitrators are procedurally bold; they also have to show commitment and real engagement from the outset right to the end", stresses Joanne Cross. Even though it is an open secret that arbitra-



tors are conscious about their reputations, a piece of advice to arbitrators is to monitor their workload in order to meet the standard of engagement and quality expected and deserved by parties. Indeed, while trying to get as many cases as possible on to their schedules and by not giving cases the necessary time and consideration they deserve, arbitrators may in fact be jeopardizing their potential future appointments.

In Matthew Secomb's opinion, "arbitration does not have to be a surprise like the Oscars", where no one knows the outcome until the award is rendered. This may be because arbitrators do not read all the papers from the outset. Matthew Secomb requests "an opinion from the very outset"



and he wants “arbitrators to share this opinion with the parties”. This is also significant for the parties, as they can then see if arbitrators really understood the arguments. Joanne Cross goes even further and suggests distributing a draft award to enable the parties to see if there are any flaws. Accordingly, giving the parties around two weeks to comment on the draft before rendering the final award will save on time, money and work. “No doubt real engagement by the tribunal will encourage clients to choose arbitration”, concludes Joanne Cross.

Interim measures. There is a lack of willingness from tribunals to award interim measures, thinking these may defeat the purpose of arbitration, delay the proceedings and lead to lengthy hearings. “And if this really is the main reasoning behind reluctance of arbitrators to grant interim measures, it is a shame”, according to Joanne Cross. This reasoning also raises the question of fairness of the outcome of a case where a party is denied the right to interim measures on these grounds. There is a strong assumption among client representatives that tribunals will not grant interim measures. “They do not seem to be fitting into arbitration naturally the way they do with national courts”, comments Joanne Cross. Counsels are tackling the question of enforcement and arbitrators see less point in granting these measures. As a result, the reluctance of counsel lies with a lack of courage.

Innovation distinguishes the leader from the follower. Arbitration, as functional and popular as it might be in the legal world, can still innovate and improve. To do so, however, takes creative, brave and willing players. We need to think differently about how to organize ourselves: clients need more engaged arbitrators and bolder counsel. ■

THE AUTHORS

The authors are former students of the 2011/2012 Master of Laws Program in International Commercial Arbitration Law at Stockholm University.

KATHARINA FLEISCHMANN is qualified as a German lawyer working in the area of dispute resolution. During her legal studies, she participated and later coached the University of Erlangen-Nuremberg’s team for the Willem. C. Vis International Commercial Arbitration Moot.

CELESTE E. SALINAS QUERO graduated from Universidad de Chile Law School in 2008 and became a Chilean qualified lawyer in 2011. She is a member of the Stockholm University team for the XIX. Willem. C. Vis International Commercial Arbitration Moot.

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Disclaimer. The ambition of this book has been to capture the discussion and ideas shared during the Innovation in Arbitration conference in order to enable the dialogue to continue. All effort has been made to adequately reflect the conference’s discussion. The views expressed in this book do not necessarily reflect the views of the SCC, the panelists or the authors.

SPEAKERS



DOMITILLE BAIZIEU is a partner at LALIVE in Geneva, where she practices exclusively in international arbitration. She has acted as counsel and arbitrator in numerous international arbitration proceedings, ad hoc or administered, governed by various procedural and substantive laws, including English and Swiss.



JOANNE CROSS and her London based team manage substantial disputes for the BP Group across the globe. Ms. Cross trained and qualified at Slaughter and May in Dispute Resolution and also practiced as a Dispute Resolution specialist at Herbert Smith, before joining BP's Dispute Resolution team in 2003.



PONTUS EWERLÖF is a Senior Associate in Cederquist's dispute resolution group in Stockholm. He has vast experience as counsel and arbitrator in complex litigation and arbitration proceedings. Prior to joining Cederquist, Mr. Ewerlöf was an Associate Judge at the Solna District Court and Svea Court of Appeal and an Associate at Mannheimer Swartling in Stockholm.



PETER J. REES, QC was appointed Legal Director of Royal Dutch Shell plc on January 1, 2011. He is responsible for the Shell global legal function and is a member of the Executive Committee of Royal Dutch Shell. Before joining Shell, Mr. Rees worked at the international law firm, Norton Rose, and later as partner at Debevoise & Plimpton.



DAVID W. RIVKIN, co-chair of the Debevoise & Plimpton's international dispute resolution group, is a litigation partner in the firm's New York and London offices. Mr. Rivkin has broad experience in the areas of international litigation and arbitration and is consistently ranked as one of the top international dispute resolution practitioners in the world.



MATTHEW SECOMB is a partner at White & Case in Paris and concentrates on international commercial arbitration, with a focus on construction and energy-related disputes. He has been involved in international commercial arbitrations under most of the major institutional rules, as well as ad hoc arbitrations. Prior to joining White & Case in 2006, Mr. Secomb was counsel to the ICC International Court of Arbitration.



MARK KANTOR was a partner in the corporate and project finance groups of Milbank, Tweed, Hadley & McCloy until he retired. He currently serves as a commercial and investment arbitrator and teaches courses in International Business Transactions and in International Arbitration at the Georgetown University Law Center.



ROBIN OLDENSTAM is a partner at Manheimer Swartling in Stockholm. He specializes in arbitration and civil litigation and has acted as counsel in numerous arbitrations under the SCC, the ICC, UNCITRAL and other rules in both Sweden and abroad. Mr. Oldenstam is also chair of the Swedish Arbitration Association (SAA).



ANNETTE MAGNUSSON is Secretary General of the Arbitration Institute of the Stockholm Chamber of Commerce (SCC). Ms. Magnusson joined the SCC in 2010 from the dispute resolution team of Mannheimer Swartling in Stockholm, and before that she worked at Baker & McKenzie.

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The Arbitration Institute of the Stockholm Chamber of Commerce (“SCC”) handles roughly 200 new domestic and international cases each year. Established in 1917, the SCC has long been recognised as a neutral venue for the resolution of East West disputes and was specifically recognised as such by the United States and Soviet Union in the 1970’s. Today, the SCC attracts parties and arbitrators from countries all over the world to resolve a broad-range of commercial and investment disputes. For more information on the SCC, please visit www.sccinstitute.com.



Young Arbitrators Stockholm (“YAS”) is an association established by the SCC in 2003. YAS aims to increase knowledge and interest amongst young practitioners in the field of international arbitration and has approximately 350 members worldwide. The association frequently organises seminars and other activities for its members and those interested in the association. For more information on YAS or to become a member, please contact yas@chamber.se.



The Swedish Arbitration Association (“SAA”) is an organisation for lawyers worldwide and is dedicated to the practice and theory of arbitration. The SAA promotes arbitration as a dispute resolution method, Swedish and international arbitration law and Sweden as an international arbitration venue. The organisation engages in publication projects and regularly hosts seminars and conferences and a training programme for young arbitrators. For more information on the SAA or to become a member, please visit <http://swedisharbitration.se/>.

MODEL CLAUSES

SCC Rules

Any dispute, controversy or claim arising out of or in connection with this contract, or the breach, termination or invalidity thereof, shall be finally settled by arbitration in accordance with the Arbitration Rules of the Arbitration Institute of the Stockholm Chamber of Commerce.

Recommended additions:

The arbitral tribunal shall be composed of three arbitrators/a sole arbitrator.

The seat of arbitration shall be [...].

The language to be used in the arbitral proceedings shall be [...].

This contract shall be governed by the substantive law of [...].

SCC Rules for Expedited Arbitrations

Any dispute, controversy or claim arising out of or in connection with this contract, or the breach, termination or invalidity thereof, shall be finally settled by arbitration in accordance with the Rules for Expedited Arbitrations of the Arbitration Institute of the Stockholm Chamber of Commerce.

Recommended additions:

The seat of arbitration shall be [...].

The language to be used in the arbitral proceedings shall be [...].

This contract shall be governed by the substantive law of [...].

Combined clause – Rules for Expedited Arbitrations as first choice

Any dispute, controversy or claim arising out of or in connection with this contract, or the breach, termination or invalidity thereof, shall be finally settled by arbitration administered by the Arbitration Institute of the Stockholm Chamber of Commerce (the “SCC”).

The Rules for Expedited Arbitrations shall apply, unless the SCC in its discretion determines, taking into account the complexity of the case, the amount in dispute and other circumstances, that the Arbitration Rules shall apply. In the latter case, the SCC shall also decide whether the Arbitral Tribunal shall be composed of one or three arbitrators.

Recommended additions:

The seat of arbitration shall be [...].

The language to be used in the arbitral proceedings shall be [...].

This contract shall be governed by the substantive law of [...].



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