

PATRON'S ADDRESS

*The Honourable The Chief Justice Sundaresh Menon**

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The Right Honourable The Lord Neuberger, President of the Supreme Court of the United Kingdom, Mr Charles Brown, President of the Chartered Institute of Arbitrators, Mr Anthony Abrahams, Director-General of the Institute, Honourable Judges, Distinguished Guests and Friends, Ladies and Gentlemen:

I. Introduction

1 We gather today to commemorate a century of truly commendable work undertaken by this Institute and its members in the field of arbitration. At the heart of the very impressive list of the Institute's outstanding achievements has been its relentless drive to internationalise the practice of arbitration. From a single overseas branch in Australia in 1927 to over 13,000 members spread across more than 120 countries today, the Institute has developed an international reach that few other comparable organisations can boast of. Indeed, as Lord Neuberger observed, evidence of this can be seen in the fact that many of us have travelled thousands of miles to be here in order to

* Sundaresh Menon, Chief Justice of the Supreme Court of Singapore. I am deeply grateful to my colleague, Assistant Registrar Nicholas Poon who assisted me with the research and preparation of this paper and who discussed many of the ideas with me.

participate in this historic event. We do have ample reason to celebrate this milestone.

II. International arbitration in a globalised world

2 In 1983, an American economist wrote in the Harvard Business Review of an emerging, powerful force of technology which was revolutionising communications, transport and travel. Theodore Levitt described this phenomenon as the “globalisation of markets”,¹ a description that popularised into mainstream, the term “globalisation” as we understand it today.

3 We tend to think of globalisation in social, economic and political terms. But the world is flatter² in ways beyond the movement of human capital and trade. Globalisation has also flattened the practice of law and the development of legal systems. Here, I do not refer only to the fact that lawyers, in general, are freer today to offer their services across national borders than they were in the past. Perhaps of greater note is the ease with which the content of laws may be disseminated across the world.

4 From where we stand today, it seems scarcely believable that just some 25 or so years ago, before the widespread deployment of the Internet, the legal systems and jurisprudence of other countries had little, if any, part to play in the

¹ See <https://hbr.org/1983/05/the-globalization-of-markets/ar/pr> (accessed at 16 Oct 2014).

² See Thomas L Friedman, *The World is Flat* (Farrar, Straus & Giroux, 2005).

development of our own legal systems. Not anymore; especially in the field of arbitration. The movement of law, and lawyers, across borders has been key to the rapid internationalisation of not just the substantive body of arbitration law but also its practice. The impressive mix of legal traditions, backgrounds and practices that characterises the arbitration profession today has undoubtedly played a vital part in its establishment as the premier mode of transnational commercial dispute resolution.

5 But as we savour the moment, we should remain mindful that there is no place for complacency or reason to assume that this international system of dispute resolution which so many have invested so much in, will continue on its recent trajectory unaided. Murmurs of disaffection among users of arbitration have been mounting in recent years; and it is unlikely to be a coincidence that commercial courts around the world are gaining prominence at the same time.

6 The Institute can unquestionably take pride in its invaluable contributions over the course of the last century to the creation of this remarkable and functioning international system of dispute resolution that we have today. But a new mission awaits – to safeguard the success of international arbitration into the 21st century and beyond, and that, I suggest, is an enterprise that cannot be delayed. There is therefore no better occasion than this Centenary Conference to renew the Institute's commitment to advancing the cause of international arbitration with the launch of the London Conference Principles 2015, a

declaration of belief that at the foundation of every effective and efficient arbitral seat rests an irreducible core of fundamental precepts.

III. The Singapore Story

7 Identifying the building blocks of a successful arbitral seat might perhaps begin with the identification of some successful seats. There are the usual suspects: London, New York, Geneva, Paris, Hong Kong and others. Singapore is often mentioned in the same breath, and perhaps rightly so.³ But Singapore could have turned out very differently if not for a handful of timely and planned interventions. Allow me to take a few minutes to make the point, that a successful seat can be and often is the result of a conscious effort, by recounting the Singapore story.

8 I begin my narrative in 1987 when the Singapore High Court in *Turner (East Asia) v Builders Federal*⁴ granted an injunction enjoining lawyers from the highly regarded New York firm, Debevoise & Plimpton, from acting or appearing as counsel for the respondents in a Singapore-seated arbitration. I have to confess a degree of responsibility for this as I was junior counsel for the

³ See eg, Queen Mary University of London & White & Case LLP, “2010 International Arbitration Survey: Choices in International Arbitration” (2010) which ranked Singapore as the 5th most preferred arbitral seat in the world. See also Berwin, Leighton, Paisner LLP, “International Arbitration: Research Based Report on Choice of Venue for International Arbitration” (2014) at pp 11–12.

⁴ *Turner (East Asia) Pte Ltd v Builders Federal (Hong Kong) Ltd & Anor* [1988] SLR 1037. The injunction was first granted *ex parte* in 1987, though the decision on the *inter partes* hearing was given in 1988.

applicant. I should also mention that the senior associate on the Debevoise team was a rapidly rising star named David Rivkin!

9 The case had very strong connections with Singapore. The applicant was a company incorporated in Singapore; and it was the main contractor for a building project in Singapore. The respondents were the sub-contractors for the manufacture and installation of the curtain walls for that project. The contract was governed by Singapore law. The dispute between the parties had been referred to arbitration before an English arbitrator appointed by the Singapore High Court, that being the seat court.

10 A preliminary meeting was fixed for hearing in Singapore. Two days before the meeting which two partners from Debevoise had intimated they would attend on behalf of their client, the applicant successfully applied *ex parte* to the High Court for an order restraining the lawyers, who were on their way from New York to Singapore, from appearing in the arbitration. It was contended that such appearance would contravene the Legal Profession Act. The Law Society of Singapore, which was separately represented, supported the applicant's position.

11 Represented by a Singapore firm in the contested hearing to determine whether the *ex parte* order should stand, the respondents rejected any suggestion that the Legal Profession Act would be contravened. They took the position that the Act had no application to arbitration proceedings at all. In effect,

they contended that such proceedings were beyond the reach of the domestic legal and regulatory framework, at least in so far as the rules proscribing the unauthorised practice of law were concerned. These arguments which seem natural and intuitive today were rather less so a quarter century ago and they were rejected by the High Court. It held first, that the object of the Act was to regulate those who practised Singapore law; and that the lawyers who had been engaged to represent a party in the arbitration of a dispute governed by Singapore law *were* engaged in the practice of Singapore law and were therefore subject to the strictures of the Act. The Court also held that the primary objective of the requirement that an advocate and solicitor must have a valid practising certificate is “to protect the public”, and parties in arbitration proceedings are “no less members of the public” to be protected. The Court, on the basis of these two grounds, concluded that any common law right, to retain in arbitration proceedings whomsoever a party desires, had in Singapore been “taken away by the Act”.

12 I state the obvious when I say that the decision was not well-received by the international arbitration community. One commentator called it a “bombshell”.⁵ And the late Professor Lowenfeld, one of the giants of international law, expressed his startle in a highly critical article.⁶

⁵ Mark C Fleming, “Keeping the Status Quo: Interim Measures in International Arbitration Agreements” (2007) 23(2) *The International Litigation Quarterly* 7 at p 8.

⁶ Andreas F Lowenfeld, “Singapore and the Local Bar: Aberration or Ill Omen” (1988) 5(3) *Journal of International Arbitration* 71 at p 72.

13 Unthinkable as it might be today, *Builders Federal* was, dare I suggest, neither obviously wrong nor indefensible in principle as the position stood at that time;⁷ nor indeed was the outcome unique. Japan, Portugal, Turkey and Yugoslavia amongst others had similar restrictions against foreign lawyers.⁸ And a decade or so later, in 1999 when I was lead counsel in an arbitration seated in another ASEAN jurisdiction, I recall being advised in all seriousness by my local co-counsel, as we set off for the hearing, that if I should be arrested for the unauthorised practice of law, I should not panic because he was sure he could get me off within a few hours! Although the list of countries which, even then, permitted foreign lawyers to appear without restriction in locally-seated arbitrations, was admittedly longer, on the other hand, protecting a small, still developing domestic Bar seems an understandable public interest from the perspective of a young nation that was still struggling to find its feet.⁹ Nonetheless, the consensus of the international dispute resolution community following *Builders Federal* was that Singapore was not an attractive seat for international arbitration.¹⁰ That was just 27 years ago.

⁷ See M Sornarajah, "The UNCITRAL Model Law: A Third World Viewpoint" (1989) 6(4) *Journal of International Arbitration* 7.

⁸ See David W Rivkin, "Restrictions on Foreign Counsel in International Arbitrations" in *Yearbook Commercial Arbitration 1991* (Albert Jan van den Berg ed) (Kluwer Law International, 1991) at p 411.

⁹ See M Sornarajah, "The UNCITRAL Model Law: A Third World Viewpoint" (1989) 6(4) *Journal of International Arbitration* 7.

¹⁰ See David W Rivkin, "Keeping Lawyers Out of International Arbitrations" (1990) 9(2) *International Financial Law Review* 11; and Gary Born, *International Arbitration: Law and Practice* (Kluwer Law International, 2012) at p 262.

14 I suppose we could have papered over the resultant groundswell of discontent that emanated from foreign businesses and the international arbitration community over the illiberal policy towards arbitration and foreign lawyers; but we did not. The key stakeholders quickly saw that such a restrictive view was inimical to any aspirations we might have harboured of developing a flourishing seat of international arbitration in Singapore. It also did not sit well with the aspirations underlying the Singapore International Arbitration Centre (SIAC) which had been established in 1991 to boost our status as an international trading and business hub.¹¹ Parliament stepped in soon enough.¹² In 1992, the Legal Profession Act was amended to permit foreign lawyers to appear in arbitrations. But initially, this was only where the applicable law was not Singapore law. This, of course, was a very modest step forward, assuming there was any movement at all.

15 The real changes came in 2004 when this remaining protection was eased.¹³ Around the same time, a slew of other measures to liberalise the industry were introduced following a wide-ranging review of the legal services sector aimed at increasing its contribution to Singapore's economic growth.¹⁴

¹¹ See *Singapore Parliamentary Debates, Official Report* (27 February 1992) vol 59 at cols 424–428 (Prof S Jayakumar, Minister for Law).

¹² Legal Profession (Amendment) Act 1992 (No 7 of 1992).

¹³ Legal Profession (Amendment) Act 2004 (No 23 of 2004).

¹⁴ See *Report of the Working Group (Legal Services): A Digest of Reforms and Recommendations* (Economic Review Sub-Committee on Service Industries, 2002) at para 1.

16 These initiatives included a concerted effort to upgrade and promote SIAC as a choice arbitration centre. Amongst other things, we internationalised the composition of the Board and in 2009, David Rivkin and I continued our professional engagement, this time on the same side, as fellow directors on the SIAC Board. David went on to serve 4 years as a member of the SIAC Board and was instrumental in driving a number of reforms that were later implemented.

17 We also ensured that cost-competitive administrative and IT-support, translation services and state of the art conference facilities such as Maxwell Chambers would be readily and easily available. Maxwell Chambers has played a particularly important role serving as a sort of spiritual home for arbitration in Singapore. The success of these measures can be seen in the fact that in a short span of 10 years, the number of arbitrations administered by the SIAC alone increased four-fold from 64 in 2003 to 259 in 2013.¹⁵ In addition, Singapore has since 2004 been the most commonly selected seat in Asia for ICC arbitrations and has consistently ranked among the top 5 ICC seats after London, Paris, Geneva and Zurich.¹⁶

18 Effective as these measures had been, they were of secondary importance to having a sound legal framework and system. Statutory reforms were implemented to modernise the arbitration architecture, none more

¹⁵ See http://www.siac.org.sg/index.php?option=com_content&view=article&id=339&Itemid=73 (accessed at 4 Jun 2015).

¹⁶ Based on the annual ICC Statistical Reports.

important than the twin adoption of the New York Convention and the 1985 UNCITRAL Model Law. Soon after this, the High Court implemented a specialist arbitration list staffed by judges who were well-versed and experienced in the field. The overriding concern was to ensure that our arbitration laws would be in keeping with widely accepted norms concerning the conduct of international arbitration, and would be applied in a predictable way that was in line with this intent.

19 By the mid to late 2000s, there had been many references in the parliamentary reports to the legislature's determined and concerted efforts to develop Singapore as an international hub for arbitration. Inevitably, this public policy was picked up in the jurisprudence of our courts. Justice V K Rajah (as he then was) in *Tjong Very Sumito v Antig Investment* said thus of the paradigm shift in attitude towards international arbitration in Singapore:¹⁷

There was a time when arbitration was viewed disdainfully as an inferior process of justice. Those days are now well behind us. An unequivocal judicial policy of facilitating and promoting arbitration has firmly taken root in Singapore. It is now openly acknowledged that arbitration, and other forms of alternative dispute resolution such as mediation, help to effectively unclog the arteries of judicial administration ... More fundamentally, the need to respect party autonomy (manifested by their contractual bargain) in deciding both the method of dispute resolution (and the procedural rules to be applied) as well as the substantive law to govern the contract, has been accepted as the cornerstone underlying judicial non-intervention in arbitration.

¹⁷ *Tjong Very Sumito and others v Antig Investments Pte Ltd* [2009] 4 SLR(R) 732 at [28].

20 There were the occasional decisions that were out of line with these aspirations. This was sometimes the result of a mistake; more often, it was the consequence of legislation not yet having caught up with the arbitration revolution. For instance, the Court of Appeal in *Swift-Fortune v Magnifica Marine* concluded after a careful review of the International Arbitration Act, to its disappointment and that of many others, that it had no power to grant interim measures in aid of foreign-seated arbitrations.¹⁸ But such decisions in their own way were pivotal in the on-going reformation of the arbitration framework in Singapore. By drawing attention to the deficiencies and gaps in the law, *Swift-Fortune*, and other cases like it¹⁹ helped catalyse legislative intervention that has over time ensured that Singapore is consistently viewed as arbitration-friendly.²⁰

21 The march towards becoming a “pro-arbitration” jurisdiction has been relentless and the commitment remains firm, even as it evolves. Pro-arbitration should not be understood one-dimensionally, as if upholding arbitration agreements and awards even against the weight of principle is pro-arbitration.

¹⁸ *Swift-Fortune Ltd v Magnifica Marine SA* [2007] 1 SLR(R) 629.

¹⁹ See *PT First Media TBK (formerly known as PT Broadband Multimedia TBK) v Astro Nusantara International BV and others and another appeal* [2014] 1 SLR 372 at [138]–[140], in which it was explained that s 19B of the International Arbitration Act was enacted to effectively neutralise the outcome in *Tang Boon Jek Jeffrey v Tan Poh Leng Stanley* [2001] 2 SLR(R) 273 in which the court held that a tribunal could reverse his decision and orders made in earlier awards as long as he had not yet decided on all the issues.

²⁰ The decision in *Swift-Fortune v Magnifica Marine* resulted in the enactment of s 12A of the International Arbitration Act. In this connection, see *Singapore Parliamentary Debates, Official Report* (19 October 2009) vol 86 at cols 1626–1638 (K Shanmugam, Minister for Law) at col 1627. See also *PT Asuransi Jasa Indonesia (Persero) v Dexia Bank SA* [2007] 1 SLR(R) 597 which resulted in the enactment of the present s 10 of the International Arbitration Act.

As others such as Toby Landau have argued forcefully elsewhere,²¹ it is not. The Singapore Court of Appeal restated earlier this year in *AKN v ALC*, a case concerning allegations of breaches of the rules of natural justice, that respect for party autonomy as the cornerstone of arbitration demands from the courts, in equal measure, restraint from interfering with the merits of an arbitral award and measured robustness in vindicating the right of the parties to a fair process in line with the Model Law and the New York Convention.²² We also noted as follows at [37]:

Just as the parties enjoy many of the benefits of party autonomy, so too must they accept the consequences of the choices they have made. The courts do not and must not interfere in the merits of an arbitral award and, in the process, bail out parties who have made choices that they might come to regret, or offer them a second chance to canvass the merits of their respective cases. This important proscription is reflected in the policy of minimal curial intervention in arbitral proceedings, a mainstay of the Model Law and the IAA.

22 The rise of international arbitration in Singapore in some ways mirrors our progress from third world to first. Many of the measures we took were intuitive and deduced by looking at what others had done or were doing. By dint of careful thought, self-belief and some good fortune, we succeeded. But twenty years on, the avoidable mistakes that Singapore made along the way should not have to be made today by any budding arbitral seat.

²¹ For a synopsis of one such talk, see: <http://www.siac.org.sg/69-siac-news/410-evening-talk-with-mr-toby-landau-qc> (accessed at 29 Jun 2015).

²² *AKN and another v ALC and others and other appeals* [2015] 3 SLR 488 at [37]–[38].

23 The existence in Singapore of laws that augment the practice and conduct of arbitration, an independent judiciary experienced in and respectful of fundamental precepts of international arbitration, freedom of choice in representation, purpose-built first-in-class dispute resolution facilities, and a staunch adherence to international treaties designed to sustain an international system of arbitration, can be observed in the arbitration eco-systems of London, Geneva, Paris, Hong Kong, and elsewhere.

24 The similarities in the features and values found across these consistently well-reviewed seats give us the confidence to believe that there *is* a common basic architecture behind them. By capturing these within a single document, the London Principles serve as a blueprint for nascent arbitration jurisdictions and as a yardstick for the more established ones and in this way, they advance the internationality of arbitration.

IV. The status quo

25 Building a successful arbitral seat is therefore a conscious, deliberate, and ongoing project. But even though international arbitration is in a golden age, the task of building a successful arbitral seat is only going to get tougher. I propose today to outline just three of the factors that might contribute to this challenge:

- (a) uncertainty over the international framework governing the recognition and enforcement of awards;
- (b) growing disenchantment on the part of users of arbitration; and
- (c) a resurgence of alternatives to arbitration.

26 I explore these in reverse order.

(a) Alternatives to international arbitration

27 Options for dispute resolution have never been more varied and plentiful. In addition to mediation, expert determination, adjudicatory boards and so on, arbitration will have to contend with the resurgence of litigation as a viable alternative for complex commercial dispute resolution. Henry Ford once said that “any customer can have a car painted any colour that he wants so long as it is black”.²³ There was a time when courts seemed to have the same mindset when it came to giving court users any element of choice or autonomy.²⁴ Not anymore.

28 From London to Dubai, and New South Wales to Delaware, courts are gradually coming to terms with the realisation that commercial disputes are becoming more sophisticated, with the consequence that conventional and

²³ Henry Ford, *My Life and Work* (Arno Press, 1973) at p 72.

²⁴ On the customisability of litigation, see Michael Moffitt, “Customised Litigation: The Case for Making Civil Procedure Negotiable” (2007) 75(3) *George Washington Law Review* 461.

standardised processes are falling short of the expectations of increasingly demanding commercial litigants.

29 Accompanying this realisation, there have been significant developments on the international front. The 2005 Hague Choice of Court Convention will come into force on 1 October this year following the deposit by the EU²⁵ of its instrument of approval just a few weeks ago on 11 June 2015.²⁶ Touted as litigation's answer to the New York Convention,²⁷ and with 29 member states already party and two more that have not yet ratified it,²⁸ the Hague Convention has the potential to be a game-changer.

30 Before that materialises, however, it is the proactive domestic response of courts, evidenced by the modernisation of their processes and facilities to better serve the demands of the dispute resolution community, that is having an immediate impact. The emergence of specialised commercial courts or lists staffed by judges steeped in commercial experience applying rules and procedures specially tailored to enable a speedy and cost-efficient resolution of complex commercial disputes is a key example.

²⁵ With the exception of Denmark.

²⁶ http://www.hcch.net/index_en.php?act=events.details&year=2015&varevent=412 (accessed at 29 Jun 2015).

²⁷ Trevor Hartley & Masato Dogauchi, *Explanatory Report on the 2005 Hague Choice of Court Convention*, available at http://www.hcch.net/index_en.php?act=publications.details&pid=3959 (accessed at 7 Jun 2015) at p 27.

²⁸ Singapore and the United States of America.

31 The tangible results of some of these reforms are noteworthy. In 1995, New York became the first in the United States to launch a commercial division within its courts. Following that move, the average disposition rate for contract cases fell from 648 days in 1992 to 552 days in 1998 to 412 days in 2000. By 2002, cases on average were resolved in just under a year.²⁹ In the pipeline, is a consent-based accelerated adjudication procedure under which the time for taking out pre-trial applications would be limited, and objections based on personal jurisdiction or *forum non conveniens* would be precluded.³⁰

32 By contrast, it emerged from a survey conducted by our Institute in 2011, that the average time span for the disposal of an arbitration was between 17 to 20 months.³¹ This does not include any challenges against the award which can take anywhere in excess of three to six months in most jurisdictions. Little wonder then, that 66% of the respondents to another survey done in 2012 expressed dissatisfaction with the time it took to receive an award.³² This was also the second most commonly cited disadvantage of international arbitration reported in a 2013 survey conducted by Queen Mary University of London and

²⁹ Sharon Porcellio, “Innovation, Successes for Litigation” (2001) *New York Law Journal* at p 3.

³⁰ A. Gail Prudenti, “Renewing a Commitment to Excellence: New York’s Groundbreaking Approach to Complex Litigation” (British Insurance Law Association, 6 Dec 2013) at pp 12–13.

³¹ *CI Arb Costs of International Arbitration Survey 2011* (CI Arb, 2011) at p 12, available at <https://www.international-arbitration-attorney.com/wp-content/uploads/CIArb-costs-of-International-Arbitration-Survey-2011.pdf> (accessed at 6 Jun 2015).

³² Berwin, Leighton, Paisner LLP, “Research Based Report on Perceived Delay in the Arbitration Process” (2012), available at http://www.blplaw.com/media/pdfs/Reports/BLP_International_Arbitration_Survey_Delay_in_the_Arbitration_Process_July_2012.pdf (accessed at 17 Nov 2014).

PwC, with costs being the most significant.³³ At a more general level, it is noteworthy that the number of in-house counsel who said they preferred litigation to arbitration to settle international disputes grew from 11% in 2006 to 41% in 2008.³⁴

33 On the non-adversarial front, recourse to mediation as a means of resolving disputes is also on the rise. According to the UK Centre for Effective Dispute Resolution (CEDR), the number of mediations has increased dramatically from just under 2,000 referrals in 2003 to nearly 8,000 in 2011 in the UK.³⁵ In keeping with this, the total value of disputes mediated in 2011 hit £7.5billion, nearly 50% higher than it was in 2009.

34 Part of this may be attributable to the shift in perception towards mediation. With more transparency on settlement rates and associated costs, the conventional wisdom that mediation is an ineffectual cousin of litigation or arbitration has proven to be unfounded. Statistics show that mediation is a highly successful, time and cost-effective method of resolving commercial disputes, irrespective of jurisdiction. Across the board, average settlement rates range

³³ Queen Mary University of London & PwC, “Corporate Choices in International Arbitration: Industry Perspectives” (2013) at p 9, available at <https://www.pwc.com/gx/en/arbitration-dispute-resolution/assets/pwc-international-arbitration-study.pdf> (accessed at 6 Jun 2015).

³⁴ Queen Mary University of London & PwC, “International Arbitration: Corporate Attitudes and Practices” (2006), available at http://www.pwc.be/en_BE/be/publications/ia-study-pwc-06.pdf (accessed at 7 Jun 2015); and “International Arbitration: Corporate Attitudes and Practices” (2008), available at http://www.pwc.co.uk/pdf/PwC_International_Arbitration_2008.pdf (accessed at 7 Jun 2015).

³⁵ According to a survey by the CEDR as reflected in a report by the UK Bar Council, available at <http://www.barcouncil.org.uk/media/279670/dispute-resolution-2012.pdf> (accessed at 23 Jun 2015).

from 74%³⁶ to 86%.³⁷ In its 2012 audit, the CEDR reported that 90% of the commercial disputes it mediated were settled.³⁸ Better still, the cost of obtaining a mutually beneficial outcome is relatively low. Mediator fees are generally regarded as affordable, not least because most mediations settle within a much shorter time as compared to litigation or arbitration. The CEDR estimates that referrals to mediation in 2010 saved businesses an estimated £2billion that would have been incurred as a result of lower productivity, legal fees and damaged relationships. As Brad Berenson, the Vice President and Senior Counsel for Litigation and Legal Policy of General Electric puts it, “winning cases is not the same as winning business”. Prolonged and costly disputes disrupt business relationships, ultimately detracting from the company’s bottom line even when the outcome in litigation may be regarded as successful.³⁹

(b) Growing disenchantment

35 This brings me to the next point. Lord Mustill once memorably vented his frustrations at the cost and delay infecting arbitration, describing the process as having “all the elephantine laboriousness of an action in court, without the saving

³⁶ See <http://www.iccwbo.org/Products-and-Services/Arbitration-and-ADR/Mediation/Introduction/Mediation-and-ADR-statistics/> (accessed at 23 Jun 2015).

³⁷ See <http://www.cedr.com/news/?item=Mediation-Market-grows-by-9-percent-CEDR-2014-Audit> (accessed at 23 Jun 2015).

³⁸ See <http://www.cedr.com/news/?item=The-Fifth-Mediation-Audit-2012> (accessed at 23 Jun 2015).

³⁹ See Brad A Berenson, “The Mediation Imperative: Why Successful Companies Cannot Afford to Ignore Mediation”, available at <http://www.mediation.com.sg/assets/downloads/singapore-mediation-lecture-2014/02-Berenson-Singapore-Lecture-Sept-25-2014.pdf> (accessed at 23 Jun 2015).

grace of the exacerbated judge's power to bang together the heads of recalcitrant parties."⁴⁰ Despite many calls for reform, we are far from winning the war on rising costs in international arbitration.

36 In its report *Controlling Time and Costs in Arbitration*, the ICC noted that the main reasons for the heightened costs of arbitration are unnecessarily long and complicated proceedings.⁴¹ I highlight today just three factors which might contribute to that.

37 First, among the traditional attractions of arbitration was the finality it was meant to secure. Although most of the time expended and cost incurred in an arbitration accrues directly from the arbitration proceedings, we have seen over the years more time and money being spent challenging awards and resisting those challenges. The assurance that parties used to have that arbitration provided a high degree of finality – and hence resulted in the faster resolution of the dispute – because its awards are non-appealable on grounds of errors of law or fact may be eroding somewhat.

38 To illustrate the point, I look at the Singapore experience as to the number of attempts made to challenge an award on the specific ground of an alleged breach of the rules of natural justice. Over a 20-year period between

⁴⁰ Michael John Mustill, "Arbitration: History and Background" (1989) 6 *Journal of International Arbitration* 43 at p 56.

⁴¹ ICC Commission Report, *Controlling Time and Costs in Arbitration* (ICC, 2012) at p 6.

1985 and 2005, there were just 5 such reported challenges against an award, all of which were unsuccessful. However, in the 10 years that followed, there were 19 reported challenges with applicants succeeding entirely in only 3 of those cases.⁴² Of course, this coincides with a period of sustained growth in the arbitration market in Singapore. But I doubt it is a direct correlation. Indeed, in just the last 18 months, we saw 7 such challenges, 6 of which were dismissed. I do not think this is a trend that is unique to Singapore. Nor do I think that arbitrators have become more predisposed to breaching the rules of natural justice.

39 Of course, there will be some cases which genuinely give rise to concerns of such breaches. But in our experience, the majority of these challenges have in substance been backdoor appeals on the merits,⁴³ where attempts were made to re-litigate the merits of the case under the guise of a natural justice claim.⁴⁴ The malleability of the concept of natural justice makes this viable. An error of law, a questionable finding of fact or a procedural order that was difficult to comply with can often be recast by a skilful advocate as instances of disregard for the rules of natural justice.⁴⁵ In truth, there is limited room for courts to close the door on unmeritorious challenges because the very

⁴² *Front Row Investment Holdings (Singapore) Pte Ltd v Daimler South East Asia Pte Ltd* [2010] SGHC 80; *L W Infrastructure Pte Ltd v Lim Chin San Contractors Pte Ltd* [2013] 1 SLR 125; and *CRW Joint Operation v PT Perusahaan Gas Negara (Persero) TBK* [2011] 4 SLR 305. The applicant succeeded in part in *AKN and another v ALC and others and other appeals* [2015] 3 SLR 488.

⁴³ *BLC and others v BLB and another* [2014] SGCA 40 at [4].

⁴⁴ *AKN and another v ALC and others and other appeals* [2015] 3 SLR 488 at [37].

⁴⁵ *TMM Division Maritima SA de CV v Pacific Richfield Marine Pte Ltd* [2013] 4 SLR 972 at [125].

essence of natural justice requires such allegations to be assessed with utmost care when they come before the courts.

40 If the other grounds of challenge are factored in, the incidence of challenges against awards will inevitably be higher. We must confront this because challenges against awards – increasingly in multiple jurisdictions concerning the same dispute – can add substantially to the overall cost and delay in bringing a dispute to resolution.

41 Secondly, some observations on the evolution of institutional arbitration rules may be apposite. Designed to ensure fairness and a level playing field, institutional rules provided much needed context and parameters of engagement when they were first introduced. However, the open-textured nature of language inevitably creates uncertainty, which in turn leads to disputes. More rules are then enacted to clarify earlier rules and address new situations, but the vagaries of language can never be eradicated and so the cycle continues. There may also be a greater desire to formalise procedures in arbitration.

42 Just to illustrate the point, the 1998 LCIA Rules covered 32 Articles and spanned 14 pages.⁴⁶ In the recently revised 2014 version,⁴⁷ there are 34 Articles over 25 pages. Similarly, the first edition of the SIAC Rules had 33 rules

⁴⁶ See http://www.lcia.org/Dispute_Resolution_Services/LCIA_Arbitration_Rules.aspx (accessed at 17 Nov 2014).

⁴⁷ See http://www.lcia.org/Dispute_Resolution_Services/lcia-arbitration-rules-2014.aspx (accessed at 17 Nov 2014).

spanning 16 pages;⁴⁸ the current 2013 edition has 37 rules (not including schedules) spanning 21 pages.⁴⁹ With each new iteration, more content is either squeezed into existing rules or captured in new rules. Some of these changes may be to incorporate new processes such as the emergency arbitrator.⁵⁰ But we must guard against institutional rules becoming a tactical device that may be used by parties to clog proceedings rather than helping them flow smoothly. Moreover, by being overly prescriptive, the rules may unwittingly nullify some of the advantages of arbitration, including flexibility and innovation on the part of the tribunal on issues such as procedure and case management.⁵¹

43 Third, there is the problem of expansive document discovery.⁵² The phenomenon is sometimes seen as the “Americanization”⁵³ of the discovery process in international arbitration,⁵⁴ though I do not think the Americans are to

⁴⁸ See <http://www.siac.org.sg/images/stories/articles/rules/Rules1991.pdf> (accessed at 17 Nov 2014).

⁴⁹ See <http://www.siac.org.sg/our-rules/rules/siac-rules-2013> (accessed at 17 Nov 2014).

⁵⁰ See Schedule 1 of the 2013 SIAC Rules and Art 9B of the 2014 LCIA Rules.

⁵¹ See also Peter Goldsmith QC, “Keynote Speech, ICC UK Annual Arbitrators Forum: Ethics in International Arbitration” (Conference Materials, 2013) on how the flexibility of arbitration “enables it to accommodate an international clientele”.

⁵² See Lucy Reed & Jonathan Sutcliffe, “The ‘Americanization’ of International Arbitration?” (2001) 16(4) *Mealey’s International Arbitration Report* 37.

⁵³ See David Rivkin, “21st Century Arbitration Worthy of its Name” in *Law of International and Business Dispute Resolution in the 21st Century* (Liber Amicorum Karl-Heinz Böckstiegel) (Robert Briner et al eds) (Heymanns, 2011) at p 661.

⁵⁴ See Roger Alford, “The American Influence on International Arbitration” (2003) 19 *Ohio State J Disp Resolution* 69.

be blamed for this “shoot first aim later” syndrome.⁵⁵ Indeed, Dr Klaus Sachs has noted that the rise in the number of requests for the production of documents in international arbitration cases has no evident relationship to the parties’ background in the civil law or common law.⁵⁶

44 This is a subject that does need study and consideration. In 2009, the Corporate Counsel International Arbitration Group, perhaps the foremost voice of the users of arbitration, highlighted that a majority of its participants felt strongly that “excessive discovery” contributed to increased costs and delay in arbitration, as well as the inflation of counsel’s fees.⁵⁷

45 In some ways, what we are experiencing with discovery may be symptomatic of the seemingly prevalent current thinking that the written record is king. This, in turn, has fostered a culture of over-inclusiveness in the conduct of arbitrations. Discovery is but one aspect. Other aspects include prolix opening and closing submissions, witness statements, and cross-examination. Bernard Hanotiau remarked recently in a conference that he once received a post-hearing memorial that was over 4,000 pages long!⁵⁸

⁵⁵ For a rebuttal to the proposition that discovery in international commercial arbitration is becoming too Americanized, see George M von Mehren & Alana C Jochum, “Is International Arbitration Becoming too American” (2011) 2 Global Business Law Review 47.

⁵⁶ Klaus Sachs, “Use of Documents and Document Discovery: ‘Fishing Expeditions’ Versus ‘Transparency and Burden of Proof’” 2003(5) SchiedsVZ 193 at p 197.

⁵⁷ *Report to the CCIAG from the Discovery Working Group* (30 Oct 2009) at p 5, available at <http://www.cciag.com/wp-content/uploads/2013/07/DISCOVERY-REPORT.pdf> (accessed at 6 Jun 2015).

⁵⁸ His comment was made in a panel discussion on “Advocacy Tips” as part of the YSIAC Conference 2015: The Dynamics & Challenges of International Arbitration.

46 There is something of a paradox in all this. The ability to challenge awards was restricted in order to enable awards to be speedily enforced. The fact that even as the number of challenges has risen most of them fail is evidence of the tightness of the legal framework. But because of this, practitioners tend to view the arbitration as a one-shot affair and this can cloud judgment and result in relatively unimportant things assuming disproportionate importance.

47 Under the conditions that arbitrations are taking place, are we really surprised that arbitrations are becoming more costly and inefficient?

48 But it need not be this way. In 2010, Debevoise & Plimpton issued a Protocol to Promote Efficiency in International Arbitration setting out 25 measures that its arbitration lawyers would take at every stage of the arbitral proceedings to drive for an efficient process.⁵⁹ For instance, in relation to the formation of the tribunal, arbitrators would be asked to confirm their availability and schedules before being appointed; in relation to evidence, meetings of experts to identify points of agreement and to narrow points of disagreement before the hearing will be encouraged; and in relation to the hearing, post-hearing briefs will be requested only where necessary and not as a matter of course.

⁵⁹ See <http://www.debevoise.com/~media/files/capabilities/russia%20comercial%20arbitration/arbitration%20protocol.pdf> (accessed at 17 Nov 2014).

49 There is a similar but wider industry effort by a Task Force constituted under the ICC Commission on Arbitration. Co-chaired by two of the most respected arbitration practitioners, Yves Derains and Christopher Newmark, the Task Force on Reducing Time and Costs in Arbitration released a report setting out a large number of techniques which can be used for organising the arbitral proceedings and controlling their duration and cost.⁶⁰

50 We are not short of ideas but it would be encouraging to see some widespread adoption of these techniques and measures because law firms, arbitrators and arbitral institutions all have much to gain from taking an active stance against unnecessary escalation of costs. It is undeniably a good thing that arbitrators and counsel are working hand in hand to devise and implement procedural innovations – the Redfern Schedule, the Reed Retreat, the Sachs Protocol and the Kaplan Opening to name a few⁶¹ – all of which seek to enhance the efficiency of the arbitral process.

(c) Uncertainty over international framework for enforcement of awards

51 A third challenge that I wish to mention is the growing uncertainty over the international framework governing the recognition and enforcement of

⁶⁰ Available at <http://www.iccwbo.org/Data/Policies/2012/ICC-Arbitration-Commission-Report-on-Techniques-for-Controlling-Time-and-Costs-in-Arbitration,-2012/> (accessed at 17 Nov 2014).

⁶¹ Paul Tan & Samuel Seow, "An Overview of Procedural Innovations in International Commercial Arbitration (Law Gazette, 2014).

awards. There is, for instance, a lack of international consensus on the effect of an order by the seat court setting aside an award in subsequent enforcement proceedings. And we have also seen the re-litigation of identical issues in different enforcement proceedings in different courts. This is bound to increase costs and further erode the value of finality.

52 Ever since the decisions of the French courts first in *Hilmarton v Omnium*⁶² and subsequently in *Chromalloy v Egypt*⁶³ which effectively held that an award may remain in existence even after it has been set aside, there has been much debate on the effect of a vacated award. The traditional view has been that an award which is set aside at the seat of arbitration has no legal existence or effect because the force of an award comes from the law of the seat⁶⁴ – *ex nihilo nihil fit*.⁶⁵

53 That view, however, has lost some force following a series of court decisions over the last six years in the United States,⁶⁶ the Netherlands⁶⁷ and England in which awards that had been annulled at their seats were nonetheless

⁶² *Société Hilmarton Ltd v Société Omnium de traitement et de valorisation* (1995) XX Yearbook Comm Arb 663.

⁶³ *Chromalloy Aeroservices v Arab Republic of Egypt* (1997) XXII Yearbook Comm Arb 691.

⁶⁴ See Francis Mann, “The UNCITRAL Model Law – Lex Facit Arbitrum” (1986) 2(3) *Arbitration International* 241.

⁶⁵ Albert Jan van den Berg, “Consolidated Commentary on the Court Decisions Concerning the New York Convention” (2003) XXVIII Yearbook Comm Arb 562 at p 650.

⁶⁶ *Corporación Mexicana de Mantenimiento Integral, S. De R.L de C.V v Pemex-Exploración y Producción*, Case 1 10 cv-00206-AKH (27 Aug 2013).

⁶⁷ *Yukos Capital SARL v OAO Rosneft, Gerecht-shof Amsterdam* (Amsterdam Court of Appeal) (2009) 34 YB Com Arb 703.

later enforced. Of these, let me mention just one, the English High Court's decision in *Yukos v Rosneft*.⁶⁸

54 The applicant in *Yukos* applied for enforcement of four awards which had been set aside by the Russian court. Before Mr Justice Simon, the parties agreed that the key issue in question was whether the awards could not be enforced because “they no longer exist in a legal sense” following the Russian court's decision.

55 Mr Justice Simon held that it would be “unsatisfactory and contrary to principle if the [enforcing] court were bound to recognise a decision of a foreign court which offended against basic principles of honesty, natural justice and domestic concepts of public policy.”⁶⁹ He also noted that there was a “considerable body of academic opinion” which denies that judgments setting aside awards must be recognised without condition. Mr Justice Simon's approach was subsequently followed by Mr Justice Walker in *Malicorp v Egypt*.⁷⁰

56 The upshot of *Yukos* is that an award that has been set aside at the seat will only be regarded by the enforcement court as having been vacated if the enforcement court recognises the judgment setting aside the award. Although the theory of recognition of foreign judgments is a well-established concept in

⁶⁸ *Yukos Capital S.a.r.L v OJSC Oil Company Rosneft* [2014] EWHC 2188 (Comm).

⁶⁹ *Yukos Capital S.a.r.L v OJSC Oil Company Rosneft* [2014] EWHC 2188 (Comm) at [20].

⁷⁰ *Malicorp Limited v Government of the Arab Republic of Egypt and others* [2015] EWHC 361.

private international law and supplies a convincing juridical basis to support enforcement of a vacated award under certain circumstances,⁷¹ there is no denying that puncturing the aura of finality previously accorded to decisions of seat courts potentially undermines the functioning of arbitration as an international system.⁷²

57 For a start, a judgment that sets aside an award will no longer afford the award debtor any respite from having to resist further enforcement proceedings. Taking *Yukos* to its logical conclusion, the award debtor would have to establish the integrity of the setting aside judgment in every single enforcement court that the award creditor may seek to enforce the award in.⁷³

58 Of course, I acknowledge that our common sensibilities of justice ordinarily dictate that a judgment procured by corruption or fraud should not be permitted to invalidate an otherwise valid award. But to arrive at such a conclusion requires one court to sit in judgment of another and in turn, raises difficult issues including in respect of such matters as the standard of proof to be applied before arriving at a finding that indeed the foreign judgment is to be discarded because the foreign court has acted fraudulently or corruptly.

⁷¹ For a powerful defence of the recognition approach, see Jan Paulsson, "Arbitration in Three Dimensions" (LSE Law, Society and Economic Working Papers 2/2010). For a contrary view against the recognition of foreign judgment approach in the enforcement of awards, see Maxi Scherer, "Effects of Foreign Judgments Relating to International Arbitral Awards: Is the 'Judgment Route' the Wrong Road?" (2013) 4(3) *Journal of International Dispute Settlement* 587.

⁷² See for eg, the criticisms by Albert van den Berg in "Enforcement of Arbitral Awards Annulled in Russia" (2010) 27(2) *Journal of International Arbitration* 179; and "Should the Setting Aside of the Arbitral Award be Abolished" in (2014) *ICSID Review* 1.

⁷³ Cf. paras 60–65 on the effects of issue estoppel.

59 And there is an additional point. The parties' choice of the seat will generally be a matter of express and autonomous contractual agreement. Why should such autonomy be any less deserving of deference than is accorded in other settings? To put it bluntly, suppose the parties may be taken to know that due process is illusory in Ruritania, yet choose to nominate it as the seat of arbitration; why should such parties be allowed the opportunity to bypass the consequences of having chosen such a seat? Party autonomy can be both a virtue and a millstone, the difference depending on whether one has won or lost.

60 Another controversy of practical relevance that concerns the New York Convention is the re-litigation of identical issues in different fora. We saw that most prominently in the dispute between Dallah and the Government of Pakistan, where the English⁷⁴ and French⁷⁵ instalments of that dispute produced opposite results even though both sets of courts applied the same principles of arbitration and French contract law. Gary Born has described this as “regrettable” and a “serious injustice” to the purposes of the New York Convention.⁷⁶ It appears that issue estoppel was not raised in the French court. There was some suggestion that had Dallah first sought *exequatur* in the French courts prior to seeking enforcement in England, it might have successfully

⁷⁴ [2010] UKSC 46.

⁷⁵ *Gouvernement du Pakistan, Ministère des Affaires religieuses c/ Dallah Real Estate and Tourism Holding Company*, Paris, pôle 1, ch. 1, 17 February 2011, RG 09/28533.

⁷⁶ See Gary Born, “Dallah and the New York Convention” (Kluwer Arbitration Blog, 7 Apr 2011), available at <http://kluwerarbitrationblog.com/blog/2011/04/07/dallah-and-the-new-york-convention/> (accessed at 7 Apr 2015).

prevailed in an argument founded on issue estoppel.⁷⁷ They did not do that and so we cannot know for sure.

61 We do know, however, that a ruling of a foreign court in enforcement proceedings under the New York Convention may be the subject of an issue estoppel in subsequent enforcement proceedings in an English court. In the decision of the High Court in *Diag v Czech Republic*,⁷⁸ the claimant, having tried and failed to enforce the award in Austria amongst other countries, attempted to have it enforced in England. The respondent contended that the judgment of the Supreme Court of Austria which held that the award was not yet binding gave rise to an issue estoppel which would operate to preclude enforcement.

62 Mr Justice Eder agreed with the respondent. He held that with some possible exceptions,⁷⁹ a foreign judgment on enforcement proceedings under the New York Convention which satisfied the English test for issue estoppel could bind a party in subsequent proceedings in England.⁸⁰ As the Austrian Supreme Court's judgment satisfied the requirements for issue estoppel, its ruling that the award was not yet binding was therefore held to estop the claimant from arguing otherwise in the English proceedings.

⁷⁷ D Brian King & Rahim Moloo, "Enforcement After the Arbitration: Strategic Considerations and Forum Choice" at p 12, available at <http://arbitrateatlanta.org/wp-content/uploads/2013/04/Enforcement-After-the-Arbitration.pdf> (accessed at 7 Apr 2015).

⁷⁸ *Diag Human SE v The Czech Republic* [2014] EWHC 1639 (Comm) at [59]–[62].

⁷⁹ See *Yukos Capital v Rosneft Oil* [2013] 1 WLR 1329.

⁸⁰ *Diag Human SE v The Czech Republic* [2014] EWHC 1639 (Comm) at [59].

63 Recognising issue estoppel in this context seems eminently sensible, both from the perspective of harmonising the treatment of awards and perhaps even more importantly, the overarching public policy of finality. But, as the first instalment of the Hong Kong sequel to the Astro dispute illustrates,⁸¹ there may be limits to this. There, the Hong Kong High Court declined to set aside its earlier orders permitting enforcement of a number of awards in favour of Astro on two main grounds, one of which was that the award debtor, First Media, had offended the principle of good faith under the New York Convention.

64 On the facts, the Court concluded that First Media had offended the principle of good faith because it had decided not to challenge the tribunal's jurisdiction earlier under Article 16(3) of the Model Law, and raised it only at the enforcement stage in Singapore where, as it turned out, they succeeded.⁸²

65 It apparently was not thought relevant that the Singapore Court of Appeal had already held that First Media was not obliged to avail itself of the remedy under Article 16(3), and further, that First Media's failure to do so did not preclude it from subsequently resisting enforcement under the Article 36 grounds of the Model Law which are principally derived from Article V of the New York Convention.

⁸¹ *Astro Nusantara International BV and others v PT Ayunda Prima Mitra and others and AcrossAsia Limited*, HCCT 45/2010.

⁸² *Astro Nusantara International BV and others v PT Ayunda Prima Mitra and others and AcrossAsia Limited*, HCCT 45/2010 at [89].

66 The examples of *Dallah*, *Diag* and *Astro (HK)* illustrate the complexity of ensuring consistency in enforcement proceedings across multiple jurisdictions. And this is without factoring in civil law systems which take a different approach to the operation of issue estoppel.⁸³

67 In a globalised setting where commercial disputes increasingly straddle multiple jurisdictions, we can be assured that the soundness of our present international framework for the recognition and enforcement of arbitral awards will be tested to its limits.

V. Building a constellation of effective and efficient arbitral seats

68 What is at stake in all this is not merely whether arbitration is cost and time efficient, or whether the international framework for the enforcement of awards is harmonised. Rather, what is at stake is the credibility of arbitration as a global dispute resolution mechanism or system that can sustain us into the next century: are these flaws an omen of serious fissures? Because of the resurgent alternatives which users of arbitration can migrate to, this is a vote of confidence that we should not lose.

⁸³ See *The Cambridge Companion to Comparative Law* (Mauro Bussani & Ugo Mattei eds) (Cambridge University Press, 2012) at p 228; see also Liu Guoqing, "A Comparative Study of the Doctrine of Estoppel: A Civilian Contractarian Approach in China" (2010) *Canberra Law Review* 1. Even though some civil law systems will recognise a foreign judgment, it only does so in relation to the final order and not to preliminary rulings even if those were necessary steps in the chain or reasoning that led to the final order: see Trevor Hartley, *International Commercial Litigation: Text, Cases and Materials on Private International Law* (Cambridge University Press, 2009) at p 375.

69 In assessing the seriousness of these threats to the institution of arbitration, we should guard against being lulled into a state of “irrational exuberance”.⁸⁴ The growth in numbers and size of arbitrations year on year, might give us false comfort that arbitration remains the only game in town, that the problems are not serious, and that these wrinkles are either fleeting, or someday, somehow, they will iron themselves out. I doubt this is a valid premise.

70 With the scale of arbitration practice internationally as it is today, any hope that such challenges can be easily overcome by a silver bullet is illusory. While globalisation has made arbitration accessible to a global audience, the people who have come to embrace arbitration do not necessarily share the same cultural inheritances, ethical beliefs, value systems or even philosophy of law. This is only to be expected given the pluralistic world that we live in.

71 Scholars call this “glocalisation”,⁸⁵ a portmanteau of globalisation and localisation. With party autonomy and consent as its cornerstones, arbitration, unsurprisingly, is amenable to glocalisation. But the result of this is an incongruous international system consisting of a plurality of arbitral seats, much like spokes from the same wheel that are bent in different directions and angles, producing a wheel that is out of shape. The wheel still looks like a wheel, and

⁸⁴ A concept in the world of investing made prominent by the former Federal Reserve Board Chairman, Alan Greenspan, to describe market activity that has no causal relation to the underlying strength of the market.

⁸⁵ The major locus of the origin of this term appears to have been Japan: Roland Robertson & Kathleen E White, “Globalization: An Overview” in *Globalization: Critical Concepts in Sociology* (Roland Robertson & Kathleen E White eds) (Routledge, 2003) at p 35.

feels like a wheel. It can even run like a wheel, just not as fast or as straight as it should.

72 A fully homogenous international system, unlike a perfect wheel, is fanciful. Moreover, plurality should be managed more than obviated because a certain degree of differentiation breeds healthy competition. What is needed, therefore, is a common structural foundation across a good number of effective arbitral seats that speaks to the central identity of international arbitration, but yet can accommodate variations to account for the political, social and economic idiosyncrasies within each seat.

73 I see the London Principles as an important step in that direction. By identifying the skeletal framework for an effective and efficient seat for the conduct of international arbitrations, the Principles represent a major effort at concretising the aspirational goals of international arbitration enshrined for decades in the preamble of international instruments such as the New York Convention and the Model Law. The aspirational nature of the Principles, however, should not detract from their utility, of which, I think, there are at least three major aspects.

74 First, the Principles are in the form of tangible guidelines. They are therefore of practical benefit. For fledgling arbitral seats, the Principles can be the blueprint for development of their budding legal and physical infrastructure. For the more advanced jurisdictions, the Principles can act as a benchmark

against which they can gauge the success of their own systems. If the Principles accomplish just this end, they will have served a valuable purpose. The extent to which seats do adopt these Principles will in turn determine the choices that users of arbitration will make.

75 Second, we can be optimistic of the widespread adoption of the Principles because they are sound and with this, we will see more convergence of arbitral systems operating on and within similar parameters. This in turn will enable us to move beyond concerns in relation to particular seats, towards developing a global system that can meet the needs of the international commercial community and this will vest in arbitration the critical quality of internationality. I suggest that will be key in the next stage of growth for international arbitration as a whole and as a system of dispute resolution because as globalisation escalates and commercial disputes span multiple jurisdictions, it will be internationality, perhaps more than any other consideration, that will drive users' selection of dispute resolution mechanisms.

76 This brings me back to the analogy with the wheel: if the London Principles are accepted by the international community, more or less, as the basis for their arbitral systems, we would have succeeded in righting the shape of the wheel, more or less. Even if the spokes may still not be perfectly aligned, we would have made significant progress in the development of a viable international system of dispute resolution that can sustain us into the future.

77 Third, as a declaration, the Principles are also a medium for consensus building within the broader international arbitration community. I believe the Principles are just the beginning. They should not be seen as exhaustive or immutable. As I suggested earlier, building a successful arbitral seat is an enduring project that has no end. I would therefore hope that the Principles are regularly refined and refreshed, in keeping with the larger objective of galvanising partnership and promoting solidarity across arbitral seats.

78 It is imperative that the project of building a constellation of successful arbitral seats rests on an on-going conversation between stakeholders, all of whom have a keen interest in the development of these Principles and the shared value system which they stand for. Perhaps that conversation might extend in time to address some of the issues I have alluded to, including the development of a consensus as to how we should approach the decisions of seat courts or how we should resolve the operation of issue estoppel in respect of enforcement decisions in arbitration or the ways in which the value of finality can be strengthened.

79 If we are to find a viable response to some of the present challenges that our profession faces, it will come about because of a dialogue that leads to a common understanding among members of the international arbitration community, as to the core values for a model of international arbitration that can be sustained into the next century. Our role, as members of the Institute, should be to facilitate, encourage and shape this dialogue.

Conclusion

80 It is a great honour for me to deliver the Patron's address on this special occasion. Thank you. I wish you all a wonderful conference!