

A few thoughts and (critical) comments on the ICC Commission Report for Construction Industry Arbitrations

Introductory (provocative?) remarks

- Has international Arbitration started to **overflow** with Reports, Best Practice Guides, and Guidelines?
- Is there actually a risk that arbitration loses its key element of **flexibility** and derails towards “**judicialization**”?
- Within this context, how easy is it, in practice, to say that the expression “*there is no single right way to conduct a construction arbitration*” (and an arbitration in general) holds true?

Case Management Conference

- It is absolutely necessary in all (?) construction arbitrations.
- We need more than one Case Management Conferences (the second maybe more important than the first one).
- A Case Management Conference's efficiency fully depends on the extent of the arbitrators' knowledge of the dispute.

Timetable, practicability of steps and hearing date / procedures

- Due process vs expeditiousness & cost efficiency
- Is this a real or a pseudo-dilemma?
- If one has to choose, one must choose in favor of due process.

Splitting the case (Bifurcation)

- Splitting the case needs to be carefully considered.
- Several criteria should be taken into account.
- *“In dubio pro non-splitting the case”*

Witnesses

- “*Fake*” experts vs witnesses of facts (What should be the best approach?)

Experts

- By no means substitution of the Arbitral Tribunal
- Best efforts so as the parties agree on issues and facts upon which expert opinion is required
- Party-appointed vs Tribunal-appointed experts (another pseudo-dilemma? - key issues “party autonomy”, “transparency”, “interaction”)

Arbitrators' contribution to settle the dispute

- Arbitrators' contribution to the dispute's settlement is a "*taboo*" we have not yet fully overcome.

Arbitrators – Counsels/Parties

- *“It takes two to tango”*
- What counsels expect from arbitrators?
- What arbitrators expect from counsels?
- The goal is to fully satisfy, or at least make our best efforts to satisfy everyone’s expectations.
- Arbitration is not only as good as the arbitrators, but also as good as the level of fulfillment of both arbitrators and counsels/parties expectations.

Thank you



I. VASSARDANIS & PARTNERS
Law Firm