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The Rise, Fall and Rise of International Arbitration: A View from 2030

by

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Good morning, students. Welcome to this morning's seminar, which is, as usual, being conducted virtually with simultaneous translation into Chinese. I am delighted to note that over 150 students are accessing this seminar, and I can see that this morning we have students participating from the United States of Europe, as well as our usual contingent from Asia and the Americas.

Before we start, there are a couple of housekeeping issues. Please ensure that your presentations are submitted on time this week. Over-reliance on BEAM¹ technology last week meant that a number of presentations were delayed or only partially received. Do remember that we still accept submissions via the internet. Just because it's old-fashioned doesn't mean it doesn't work. Also, do make sure that if you are revising through the Plugged In method,² the electrodes are removed before you activate your virtual classroom. There were a couple of nasty incidents reported last week.

This morning's legal history topic is "The Rise, Fall and Rise of International Arbitration: A View from 2030". I hope you all enjoyed the pre-reading—*Redfern and Hunter on International Arbitration* (15th edition)—always an entertaining read, although a little out of date now as it has been out of print since 2020.

As you know, arbitration is a consensual dispute resolution mechanism whereby parties agree to settle their disputes without recourse to national courts. It dates back many hundreds of years. From our vantage point in 2030, it is useful to look back on how René David, a distinguished French commentator, viewed the origins of arbitration:

"Arbitration was mainly conceived of in the past as an institution of peace, the purpose of which was not primarily to ensure the rule of law but rather to maintain harmony between persons who were destined to live together. It was recognised that in some cases the rules and procedures provided by the law were too rigid. The law was therefore willing to give effect to an arbitration agreement entered into by the parties to settle their disputes."³

In 2008, David Rivkin, a US arbitration specialist, coined the term "The Town Elder Model" to describe the "original concept" of arbitration, which, in his view, involved:

"two business people taking their dispute to a wise business person in whom they both trusted, describing their respective claims, and then asking the arbitrator to provide them with the best solution to their dispute."⁴

In 1965 Professor Philippe Fouchard considered arbitration to be:

¹ Babel Electronically Assisted Media, a new electronic document transfer and translation system based on the principles of teleportation and visualisation, designed to eliminate the need for printers, perfected in October 2030, but still experiencing teething difficulties.

² The Plugged In revision method, whereby students attach electrodes to their skull during recuperation hours has reported excellent results. The electrodes are designed to explode when the virtual class or exam room is activated, to eradicate cheating.

³ R. David, *Arbitration in International Trade* (Deventer: Kluwer Law & Taxation, 1985), at p.29, quoted in A. Redfern and M. Hunter, *Law & Practice of International Commercial Arbitration*, 4th edn (London: Sweet & Maxwell, 2004), at p.3.

⁴ D.W. Rivkin, "Towards a New Paradigm in International Arbitration: The Town Elder Model Revisited" (2008) 24 *Arbitration Int.* 375.

“[an] apparently rudimentary method of settling disputes, since it consists of submitting them to ordinary individuals whose only qualification is that of being chosen by the parties.”⁵

Yet, as we all know, by the late 20th century and early 21st century, this “rudimentary” form of dispute resolution had evolved into a highly sophisticated system and, in fact, was the dispute resolution mechanism of choice for all major cross-border contracts.

So, why did it become so popular, and why did its popularity decline so dramatically in the first part of this century?

By the late 20th century, arbitration as described by Rivkin was barely recognisable. It had expanded into a global dispute resolution mechanism in which disputes worth billions of dollars⁶ were decided by professional arbitrators and parties were represented by specialised arbitration counsel operating in global teams. Statistics provided by the international arbitration institutions on their caseload at this time were impressive. For example, the International Chamber of Commerce (ICC) reported an increase of 77 per cent in new cases filed in 2007 compared to new cases filed in 1992.⁷ Similarly, the Stockholm Chamber of Commerce reported an increase of 60 per cent in new cases filed in 2009 compared to new cases filed in 1999.⁸ At the time, the London Court of International Arbitration (LCIA) only published snapshots of its caseload, but it did report an increase of 40 per cent over the 12-month period 2008–09.⁹ By all accounts, international arbitration was thriving.

The principal reasons for the increase in popularity were the globalisation of trade in the 20th century and the fact that arbitral awards could be easily and efficiently enforced under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958 (the New York Convention). The New York Convention was once memorably described as the “single most important pillar on which the edifice of international arbitration rests”.¹⁰ The ability it gave to enforce an arbitration award practically worldwide, coupled with neutrality of venue, confidentiality of proceedings and flexibility of procedure, meant that it was widely believed that international arbitration was almost invincible.¹¹

However, towards the latter part of the 2000s, problems with the arbitration process began to be identified. There was a shallow pool of international arbitrators, known as the international arbitration club, or, more pointedly, as the international arbitration mafia.¹²

⁵ P. Fouchard, *L'Arbitrage Commercial International* (Paris: Dalloz, 1965), quoted in Redfern and Hunter, *Law & Practice of International Commercial Arbitration*, 2004, at p.2.

⁶ The 2010 Global Arbitration Review (in its GAR 30 (2010)) attributes a total value of US \$627 billion to the portfolios of the top 30 arbitration law firms, available at <http://www.globalarbitrationreview.com/journal/article/28175/the-gar-30-gar-thirty/> [Accessed September 4, 2011].

⁷ The ICC reported 337 new cases in 1992; by 2007 it was reporting 599 new cases: (2008) 19 *ICC International Court of Arbitration Bulletin* 6.

⁸ The Stockholm Chamber of Commerce reported 135 cases in 1999 and 215 cases in 2009, <http://www.sccinstitute.com> [Accessed September 4, 2011].

⁹ The LCIA reported 243 new cases in 2009, compared to 163 disputes referred for arbitration in 2008, see <http://www.lcia.org> [Accessed September 4, 2011].

¹⁰ J.G. Wetter, “The Present Status of the International Court of Arbitration of the ICC: An Appraisal” (1990) 1 *Am. Rev. Int'l Arb.* 91 at 93. Lord Mustill considered that the New York Convention “perhaps could lay claim to be the most effective instance of international legislation in the entire history of commercial law” (Lord Mustill, “Arbitration: History and Background” (1989) 6 *J. Int'l Arb.* 43).

¹¹ J.-C. Najjar, “Inside Out: A User’s Perspective on Challenges in International Arbitration” (2009) 25 *Arb. Int'l* 515, quotes V.V. Veeder QC as saying, “There are too few national courts as accommodating to foreigners as international commercial arbitration in a neutral forum”, making arbitration “the only game in town” (V.V. Veeder, QC quoted in L. Laraki, “The Global Counsel Top 10: Arbitration Specialists”, *Practical Law Company* (May 27, 2002), available at <http://whichlawyer.practicallaw.com/4-101-7427> [Accessed September 4, 2011]).

¹² As Michael McIlwrath and John Savage point out, “In a discipline that prides itself on being transnational and designed for the resolution of cross-cultural disputes around the globe, is it acceptable that the vast majority of prominent international arbitrators are white, male lawyers or law professors over the age of 50?” (M. McIlwrath and J. Savage, *International Arbitration and Mediation: A Practical Guide* (Alphen aan den Rijn: Kluwer Law International, 2010), at para.5-079). See, for a different point of view, J. Paulsson, “Ethics, Elitism, Eligibility” (1997) 14 *J. Int'l Arb.* 13.

The small number of top arbitrators being appointed to tribunals¹³ meant that they were not available to hear disputes as quickly as the parties would like. Although the ICC introduced a process for dealing with the problem of availability, by requiring arbitrators to disclose their availability when accepting appointments, it met with some resistance.¹⁴ The end users of arbitration increasingly began to express unhappiness with the arbitration process, particularly in relation to the level of costs.¹⁵ Legal fees (together with in-house counsel and management time) made up the vast majority of the costs of pursuing an international arbitration, and the length of time an arbitration took was correlated directly with the legal fees incurred. As one commentator at the time noted:

“the longer a process takes, the more it is likely to cost. It is a regrettable fact of life that if, for example, counsel are given two weeks from the close of the hearing to prepare written closing submissions, they will fill (or largely fill) that time completing the task. If they had only been given two days, they would in most cases be able to produce submissions making substantially the same points, even if not with the same level of flair or aplomb.”¹⁶

Arbitration was still being touted as quicker and cheaper than court proceedings,¹⁷ but parties were increasingly realising that this was not, in fact, the case.¹⁸

The time taken to reach an award in an international arbitration at this time was generally in the region of one to two years, and often longer.¹⁹ One of the benefits of international arbitration was the absence of any right to appeal, but, with arbitrations taking longer than national court proceedings even including an appeal stage, parties began to express their dissatisfaction. One of the members of the Corporate Counsel International Arbitration Group, which was launched in 2006, claimed that “no one he [knew] who uses arbitration regularly [was] happy with it”.²⁰ In contemporary studies, a slight trend away from arbitration

¹³ See, e.g. the list of “top arbitrators” published by Focus Europe in its 2009 Arbitration Scorecard, in which only 11 individuals are listed, see <http://www.law.com/jsp/article.jsp?id=1202431821301&thePage=2> [Accessed September 4, 2011].

¹⁴ In his interview with Global Arbitration Review (GAR) on February 19, 2010, Yves Fortier, when asked about the ICC’s requirement for arbitrators to disclose their availability, replied: “Well, the form has proven to be controversial in some quarters. I admit to being somewhat ambivalent about it myself. I don’t like the fact that it is premised on the suspicion that, if I am approached by a party to serve as an arbitrator, I will not be honest and realistic in the assessment of my diary and availability.” See <http://www.globalarbitrationreview.com/news/article/27665/an-interview-yves-fortier/> [Accessed September 4, 2011].

¹⁵ Richard W. Naimark, senior vice president of the American Arbitration Association’s International Center for Dispute Resolution, stated, “There’s been an increasing chorus of voices that international arbitration is getting too expensive, mostly because it is taking too long”, quoted by Steven Seidenberg, in “International Arbitration Loses its Grip”, April 1, 2010, available at <http://www.abajournal.com> [Accessed September 4, 2011].

¹⁶ P. Morton, “Can a World Exist Where Expedited Arbitration Becomes the Default Procedure?” (2010) 26 *Arb. Int’l* 103.

¹⁷ See, e.g. “Arbitration Can Be a Cheap, Quick, Alternative to Lawsuits”, August 15, 1999, available at <http://www.inc.com/articles/1999/08/13719.html> [Accessed September 4, 2011].

¹⁸ The 2007 Fulbright & Jaworski Litigation Trends survey found that only 9 per cent of respondents believed that international arbitration was cheaper than litigation (down from 26 per cent in 2006 and 32 per cent in 2005). The survey concluded that “the overall trend among the survey respondents seems to be that international arbitration is not seen as offering significant cost benefits over litigation”. The survey also found that the percentage of respondents who believed that arbitration was quicker than litigation fell dramatically, from 43 per cent in 2006 to 11 per cent in 2007. Available at <http://www.fulbright.com> [Accessed September 4, 2011].

¹⁹ McIlwrath and Savage, *International Arbitration and Mediation: A Practical Guide*, 2010, at p.225. In *International Arbitration and Forum Selection Agreements: Drafting and Enforcing*, 3rd edn (Alphen aan den Rijn: Kluwer Law International, 2010), at p.6, Gary Born estimates that an international commercial arbitration takes between 18 and 36 months to complete.

²⁰ David Hechler, Corporate Counsel, “We can work it out”, February 1, 2010, extracted at <http://www.cpradr.org/Resources/ALLCPRArticles/tabid/265/ID/560/Group-Works-to-Reform-International-Arbitration-Process-Lawcom.aspx> [Accessed September 6, 2011]: “Roland Schroeder, a member of CCIAG’s steering committee, said that no one he knows who uses arbitration regularly is happy with it. A senior counsel in General Electric’s Connecticut headquarters, Schroeder coordinates GE’s international arbitration policy. And the dissatisfaction he hears from other in-house lawyers goes well beyond the common complaint that arbitrators resolve disputes by splitting the baby”. This attitude, however, contrasts with the findings in the 2008 Queen Mary/PWC survey, “International Arbitration: Corporate Attitudes and Practices”, in which 86 per cent of participating corporate counsel said they were satisfied with international arbitration, although the survey recognised that the time and cost of international arbitration were

began to be discernible. In a survey of corporate counsel published in 2006 by the School of International Arbitration at Queen Mary, University of London, only 11 per cent of in-house counsel said they preferred litigation to settle international disputes. In a subsequent survey conducted in 2008, the figure had risen to 41 per cent.²¹

Parties were dissatisfied with the length of time arbitrators were taking to render an award, there were problems with excessive challenges of arbitrators and the cost of pursuing an arbitration was substantial. In addition, there were concerns that parties were not given an opportunity to seek mediation of their disputes, and this contributed to the very low settlement rate of arbitrations. Surveys undertaken at around this time gave a settlement rate of 43–51 per cent for arbitrations, meaning that around 50 per cent of arbitrations went to final hearing.²²

In contrast, in the United States at this time only about 3 per cent, and in England only around 5–10 per cent, of civil cases went to trial.²³ These small percentages were attributable to a number of factors including the cost of pursuing proceedings, but also to the fact that in court proceedings parties were given many opportunities to mediate their disputes. In fact, US judges were authorised to order mediation on the grounds of judicial economy and to save costs.²⁴ The changes to the Civil Procedure Rules in England and Wales made in the late 1990s are credited with having a major impact on settlement rates in English civil proceedings. The Civil Procedure Rules placed great emphasis on “front-loading” cases, and litigation was intended to be viewed as a last resort. This was reflected in the sharp decline in originating proceedings in civil cases in England and Wales from 1995 to 2008, when the average number of cases issued dropped from over 120,000 to less than 20,000.²⁵ The Civil Procedure Rules also imposed a duty on English judges to actively manage cases, which included encouraging the parties to seek to resolve their disputes by alternative means.²⁶ The stark differences in settlement rates between court proceedings and international arbitration contributed to the belief that arbitrators should intervene more in arbitrations to encourage parties to consider resolving their dispute by alternative means.

viewed as disadvantages. See http://www.pwc.co.uk/pdf/PwC_International_Arbitration_2008.pdf [Accessed September 4, 2011]. C. Bühring-Uhle, L. Kirchoff and G. Scherer, *Arbitration and Mediation in International Business*, 2nd edn (Alphen aan den Rijn: Kluwer Law International, 2006), at p.127, available at <http://www.kluwerarbitration.com> [Accessed September 4, 2011], assert that “arbitration offers the best legal framework available for the resolution of international business disputes but suffers from high transaction costs and an inherent limitation in the capacity to bring about consensual solutions”.

²¹“International Arbitration: A Study into Corporate Attitudes and Practices 2006” conducted by PWC and Queen Mary, University of London, available at <http://www.pwc.com/be/en/publications/international-arbitration.jhtml> [Accessed September 4, 2011]; the 2008 study (“International Arbitration: Corporate Attitudes and Practices 2008”) is available at http://www.pwc.co.uk/pdf/PwC_International_Arbitration_2008.pdf [Accessed September 4, 2011].

²²The Bühring-Uhle survey gives a settlement rate for international commercial arbitrations of 43 per cent (Bühring-Uhle, Kirchoff and Scherer, *Arbitration and Mediation in International Business*, 2006, available at <http://www.kluwerarbitration.com> [Accessed September 4, 2011]). The 2008 survey, “International Arbitration: Corporate Attitudes and Practices” gave a settlement rate of 51 per cent. See http://www.pwc.co.uk/pdf/PwC_International_Arbitration_2008.pdf [Accessed September 4, 2011].

²³See *Setting up in the UK, a handbook for overseas law firms* (London: UK Trade and Investment, 2010), at p.9, available at <http://www.ukti.gov.uk/ukthome/item/115439.html> [Accessed September 6, 2011]: “Since 1895 the High Court has incorporated a separate Commercial Court where the procedures are geared to reflect the special requirements of the international commercial community. The international standing of the Commercial Court is such that around 80 per cent of the claims brought to the Commercial Court involve overseas parties and, in around 50 per cent of cases, there is no link to London except for the parties’ choice of London for dispute resolution. Between 1,500 and 2,000 cases are started every year, of which around 5-10 per cent typically go to trial.”

²⁴See F.V. Williams III, “Reinventing the Courts: The Frontiers of Judicial Activism in the State Courts (2007) Campbell L. Rev. 591 at 664.

²⁵See <http://www.justice.gov.uk/publications/docs/judicial-court-statistics-2008-03-chapt3.pdf> [Accessed September 4, 2011].

²⁶CPR Rule 1.4 (1): “The court must further the overriding objective by actively managing cases.

- (2) Active case management includes—
- (a) encouraging the parties to co-operate with each other in the conduct of the proceedings;
 - (b) identifying the issues at an early stage;
 - (c) deciding promptly which issues need full investigation and trial and accordingly disposing summarily of the others;
 - (d) deciding the order in which issues are to be resolved;

The international arbitration community made efforts to address these issues. The ICC Report, *Techniques for Controlling Time and Costs in Arbitration*, was published in 2007,²⁷ and the Centre for Effective Dispute Resolution (CEDR) released a detailed report and set of rules on “Settlement in International Arbitration” in November 2009.²⁸ The CEDR Report encouraged arbitrators to promote settlement of the disputes before them, but it met with resistance in the arbitral community. In essence, arbitrators saw their role as adjudicators with the primary responsibility of rendering an enforceable award; they did not see it as their responsibility to suggest that the parties explore other means of determining their dispute, i.e. by using mediation.

International law firms made some effort to reassure parties, with Debevoise & Plimpton LLP publishing a “Protocol to Promote Efficiency in International Arbitration” in April 2010, in which they promised that, as counsel, they would take steps to streamline the arbitral process, by, for example, “front-loading” the arbitration by issuing a detailed statement of claim and by requesting fast-track schedules where appropriate.²⁹ Despite these initiatives, serious reservations remained, with one commentator at the time alleging that:

“if arbitration is to commit suicide, it will do so of its own choosing, because the parties have chosen to make it more expensive, time-consuming and more like litigation.”³⁰

In the event, arbitration did not commit suicide, but it is no coincidence that, in 2005, the Hague Conference on Private International Law concluded the Convention on Choice of Court Agreements.³¹ This Convention probably marked the “tipping point”³² for the decline of international arbitration. The Convention applies in international cases to exclusive choice of court agreements concluded in civil or commercial matters. Under the Convention the designated court has jurisdiction to decide a dispute to which the agreement applies, and any other court of a contracting state must suspend or dismiss the related proceedings, except in certain specified cases (such as where the agreement is null and void under the law of the state of the chosen court and certain other situations). However, more importantly for present purposes, the Convention also provided that contracting states must recognise and enforce a judgment given by the court designated in the exclusive choice of court agreement. In the same way as the New York Convention permitted refusal of recognition

- (e) encouraging the parties to use an alternative dispute resolution procedure if the court considers that appropriate and facilitating the use of such procedure;
- (f) helping the parties to settle the whole or part of the case;
- (g) fixing timetables or otherwise controlling the progress of the case;
- (h) considering whether the likely benefits of taking a particular step justify the cost of taking it;
- (i) dealing with as many aspects of the case as it can on the same occasion;
- (j) dealing with the case without the parties needing to attend at court;
- (k) making use of technology; and
- (l) giving directions to ensure that the trial of a case proceeds quickly and efficiently.”

See, for example, CPR Rules 1.4, 44.5 and 26.4 at http://www.justice.gov.uk/civil/procrules_fin/index.htm [Accessed September 4, 2011].

²⁷ ICC Publication 843 (Paris: ICC, 2007), available at http://www.iccwbo.org/uploadedFiles/TimeCost_E.pdf [Accessed September 4, 2011].

²⁸ CEDR Commission on Settlement in International Arbitration, Final Report, November 2009, available at <http://www.cedr.com> [Accessed September 4, 2011]. The rules were “designed to increase the prospects of parties in international arbitration proceedings being able to settle their disputes without the need to proceed through to the conclusion of those proceedings”. Known as the CEDR Settlement Rules, they were intended to be incorporated on an ad hoc basis by parties in order to facilitate settlement discussions during the course of an arbitration, see http://www.cedr.com/about_us/arbitration_commission/Rules.pdf [Accessed September 4, 2011].

²⁹ See <http://www.debevoise.com/files/News/2cd13af2-2530-40de-808a-a903f5813bad/Presentation/NewsAttachment/79302949-69b6-49eb-9a75-a9ebf1675572/DebevoiseProtocolToPromoteEfficiencyinInternationalArbitration.pdf> [Accessed September 4, 2011].

³⁰ Joseph R. Profaizer, quoted by Steven Seidenberg in “International Arbitration Loses its Grip”, April 1, 2010, see <http://www.abajournal.com> [Accessed September 4, 2011].

³¹ See http://www.hcch.net/index_en.php?act=conventions.text&cid=98 [Accessed September 4, 2011].

³² M. Gladwell, *The Tipping Point* (New York: Little, Brown and Company, 2000), described as “a book that presents a new way of understanding why change so often happens as quickly and as unexpectedly as it does”, see <http://www.gladwell.com/tippingpoint/index.html> [Accessed September 4, 2011].

or enforcement of a foreign arbitral award only on certain specified grounds, recognition or enforcement of a judgment could only be refused on a number of specified grounds set out in the Convention.

The United States was the second country (after Mexico) to sign the Convention. It did so in January 2009, on the same day that the historic inauguration of President Barack Obama took place. The signature of the Convention by the United States was the first time in history that the United States had joined an agreement, bilateral or multilateral, on the reciprocal recognition and enforcement of judgments. The then European Union followed suit in April 2009.

As predicted by an ICC survey conducted in 2005,³³ the business community welcomed the Convention on Choice of Court Agreements and, slowly, other countries followed Mexico, the United States and the then European Union in ratifying the new Convention. It is interesting to note that 10 years after the New York Convention was concluded, only 29 countries had ratified it.³⁴ In comparison, by 2015, 35 countries had ratified the new Convention on Choice of Court Agreements, and today almost 110 countries have ratified it. It is fully expected that the number of contracting states to the Convention on Choice of Court Agreements will exceed the peak of 146 reached by the New York Convention in 2011.³⁵

Crucially, the new Convention finally gave those discontented users of arbitration a real choice. Back in 2010, a corporate counsel claimed that he only used arbitration because “the alternatives are so much worse”.³⁶ Now he had a choice, and users were acting on that choice.

The popularity of the Convention on Choice of Court Agreements meant that, for the first time, corporate counsel could opt for national court proceedings secure in the knowledge that any final judgment was enforceable in all contracting states. They would also know that their case was likely to settle before trial, saving significant time and costs. This, coupled with the failings of the arbitral process more generally, meant that the use of arbitration declined dramatically. By 2010–15, arbitration institutions were reporting a significant decline in their caseloads. Those institutions that had diversified into mediation and other forms of alternative dispute resolution continued to thrive, those that had not promoted alternative ways of resolving disputes struggled and, in a number of notable cases, failed completely.

For many years, international arbitration took a back seat in the field of transnational dispute resolution, with parties preferring to take their chances in the national courts, but only as a last resort after the failure of formal mediations. It became standard practice to include a multi-tiered dispute resolution clause in an international contract. This requires the parties to go through a number of steps before issuing proceedings and its inclusion in all major international contracts resulted in an explosion of cases being referred to formal mediation.

³³ See <http://www.hcch.net/upload/outline37e.pdf> (p.1) [Accessed September 6, 2011]: “The Convention of 30 June 2005 on Choice of Court Agreements was prepared by two meetings of a Special Commission in December 2003 and April 2004, and unanimously adopted by the Twentieth Diplomatic Session held from 14–30 June 2005. The ‘resurrection’ of the project was due, in particular, to the support of the business community. The International Chamber of Commerce conducted a survey among its members on the use of choice of court clauses and arbitration clauses which showed that a complementary instrument to the 1958 New York Convention on the Enforcement of Foreign Arbitral Awards would be highly welcomed by the business community.”

³⁴ See http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/NYConvention_status.html [Accessed September 4, 2011].

³⁵ See http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/NYConvention_status.html [Accessed September 4, 2011].

³⁶ Michael McIlwrath, quoted in David Hechler, Corporate Counsel, “We can work it out”, February 1, 2010, extracted at <http://www.cpradr.org/Resources/ALLCPRArticles/tabid/265/ID/560/Group-Works-to-Reform-International-Arbitration-Process-Lawcom.aspx> [Accessed September 6, 2011].

A seminar on legal history is not the place to focus on the future, but at the moment it looks as if international arbitration might be on the rise again. Recently all major international arbitration institutions have reported an increase in the number of cases referred to them. This is likely to be because in the last few years there have been a number of significant initiatives by the arbitration community, and a large number of in-house counsel have been voicing their dissatisfaction with the outcomes of mediated disputes.

Many of the international arbitration initiatives focus on the origins of arbitration and, in particular, the Town Elder Model as described by Rivkin back in 2008. In order to survive, the arbitration community has, belatedly, realised that it needs to adapt. It is uniquely placed to offer speed and efficiency because it is not constrained by any rigid procedural rules. Some of the law firms that were previously at the forefront of international arbitration have made significant efforts to raise awareness of the advantages of arbitration, namely flexibility of process, neutrality of venue and confidentiality of proceedings. Also, arbitrators have realised that in order for international arbitration to become palatable again to in-house counsel they need to control the process more stringently. Certain radical innovations in international arbitration rules have also received credit for the revival of interest in international arbitration. These innovations include procedures for the early disposition of cases and the imposition of so-called “settlement windows”³⁷ upon the timetable of the arbitration.

Sadly, the details of these innovations are beyond the scope of this seminar. However, it does look as if these innovations, together with a return to basics in the form of the Town Elder Model, may restore the fortunes of international arbitration in 2030 and beyond. Time will tell.

Thank you all for attending. Any questions?

³⁷ Short periods of suspension of proceedings, within which the parties can explore settlement.