LIMITATION ON THE USE OF ARTIFICIAL INTELLIGENCE (AI) IN ARBITRATION UNDER THE NEW YORK CONVENTION

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Abstract: *AI as a new technology clearly raises many questions across all public and private areas, arbitration being no exception. Although AI introduces numerous beneficial tools for arbitration such as document analysis or data collection, it also poses several risks. The most significant and most discussed risks include compromising due process, integrity of the proceedings, and confidentiality of arbitrators. Jeopardizing these fundamental values and principles of arbitration also entails a risk of making an arbitral award revocable, unrecognizable and unenforceable.*

Since AI is a recent phenomenon, there is still no detailed regulatory framework or developed case law providing parties with rules on the use of AI in arbitration that would minimaze the risk of issuing unenforceable award. Some arbitral institutions seek to address this legal uncertainty and publish their guidelines regarding the use of AI in arbitration proceedings. However, without established arbitration practice, it is not yet clear whether these rules are sufficient to ensure due process, procedural integrity, and confidentiality of arbitrators when using AI. It is therefore necessary to look also at other sources of regulation that would provide a framework for the lawful use of AI in arbitration. One such source is the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) and related case law. If parties want to have an arbitral award that is recognizable and enforceable even in countries outside the jurisdiction of the arbitral tribunal, they should not disregard the rules set forth in this New York Convention.

This article considers the limitation of the use of AI in arbitration from the perspective of the New York Convention. Specifically, it focuses on a violation of the right to be heard pursuant to Article V(1)(b) of the New York Convention and a violation of public policy pursuant to Article V(2)(b) of the New York Convention.

Keywords: *Arbitration, Artificial Intelligence, Due Process, Public Policy, Enforceable Award, New York Convention*

INTRODUCTION

> *The human brain is a relatively inefficient device for noticing, selecting, categorizing, recording, retaining, retrieving, and manipulating information for inferential purposes. Why should we be surprised at this? From a historical viewpoint the superiority of formal, actuarially-based procedures seems obvious, almost trivial.*[1]

On 30 November 2022, OpenAI released a free and publicly available generative artificial intelligence chatbot–ChatGPT. Artificial intelligence (AI) has thus quickly become a significant part of our lives. The 2025 International Arbitration Survey conducted by Queen Mary University of London and White & Case LLP (**2025 Survey**) reports that while around 60% of respondents used AI tools and technology for factual and legal research, data analytics and document review at least sometimes in the past five years, 90%

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[1] GROVE, William M., MEEHL, Paul E. Comparative Efficiency of Informal (Subjective, Impressionistic) and Formal (Mechanical, Algorithmic) Prediction Procedures: The Clinical–Statistical Controversy. *Psychology, Public Policy, and Law*. 1996, Vol. 2, Issue 2, p. 316.

expect to use AI for these tasks at least sometimes in the next five years, and 50% of them expect to use AI often or almost always.[2] It seems to be inevitable that advances in AI will eventually become prevalent in the legal sector.

In arbitration, AI is potentially of great use. AI tools are expected to be used in document review, fact-finding, and document production but also in selection of arbitrators or even to support arbitrators in their decision-making.[3] Most respondents of the 2025 Survey then consider the potential to save party and counsel time (54%), reduction of costs (44%), and the potential to reduce human error and inconsistencies (39%) to be the reasons for greater application of AI tools in arbitration.[4] However, the use of AI also raises several risks which, in turn, could jeopardize the arbitration proceedings and make arbitration unattractive.

For example, while 48% of respondents expect international arbitrations to become faster because of the implementation of AI tools over the next five years, 4% interviewees, on the contrary, believe that arbitrations will become slower.[5] One respondent even raised concerns that '[a]*rbitration will not necessarily become faster—you may have a new layer of procedure in which lawyers object about the use of AI!*'[6] In fact, 28% of participants said that the risk of challenges to awards on due process grounds where arbitrators used AI prevents greater use of AI in international arbitration.[7] This seems to be a valid point of view.

Recently, the case objecting to the use of AI in arbitration has been filed in a U.S. federal court. In *LaPaglia v. Valve Corporation*, the claimant has petitioned to vacate an arbitral award issued in arbitration administered by the American Arbitration Association because the arbitrator allegedly exceeded his authority under the arbitration agreement to resolve the dispute as a neutral arbitrator. The claimant argues that the arbitrator outsourced his adjudicate role to AI as he used AI for drafting the award, fact finding, and deciding the case based on the facts established by AI. The use of AI is allegedly apparent from citations of untrue information or information that is not on the record and was not even mentioned during the hearing. The text of the award also reportedly shows typical AI writing characteristics. Further, ChatGPT allegedly even confirmed that the specific paragraph of the award was likely written by AI rather than by a human. According to claimant, the arbitrator issued the award in a very short period of time, despite the hearing generating a transcript of 2,000 pages, which also indicates the use of AI.[8]

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[2] Queen Mary University of London, White & Case LLP. 2025 International Arbitration Survey. The path forward: Realities and opportunities in arbitration. 2025, p. 28.

[3] *See e.g.*, HAESLER, Janine, ISLER, Tim. Navigating the Main Impacts of Artificial Intelligence in International Arbitration: Insights from the ICC YAAF Workshop. In: *Kluwer Arbitration Blog* [online]. 17. 4 .2024 [2025-06-25]. Available at: <https://arbitrationblog.kluwerarbitration.com/2024/03/17/navigating-the-main-impacts-of-artificial-intelligence-in-international-arbitration-insights-from-the-icc-yaaf-workshop/#:~:text=On%2019%20October%202023%2C%20the%20ICC%20Young%20Arbitration,to%20a%20technological%20force%20has%20been%20remarkably%20swift>.

[4] Queen Mary University of London, White & Case LLP. 2025 International Arbitration Survey. The path forward: Realities and opportunities in arbitration. 2025, p. 29.

[5] Ibid., pp. 31–32.

[6] Ibid., p. 32.

[7] Ibid., p. 30.

[8] *LaPaglia v. Valve Corporation*. U.S. District Court Southern District of California, Case No. 25 CV0833 RBM DDL, petition to vacate arbitration award, 8. 4. 2025.

The U.S. federal court has not yet ruled on the case, but the case clearly shows the negative aspect that AI also brings to arbitration—an aspect that can lead to longer and more costly proceedings.

I. THE GUIDELINES ON THE USE OF AI IN ARBITRATION

Despite the rapid development of AI technology and its—rather slow—integration into legal professions, the regulatory frameworks with respect to the use of AI in arbitration, let alone the use of AI in general, are still missing. Such a lack of legal regulation or guidelines about using AI in arbitration creates legal uncertainty and, according to 38% of participants of the 2025 Survey, prevents AI from being more exploited in international arbitrations. Arbitration institutions are fully aware of this and seek to fill this loophole by issuing rules regulating the use of AI.

On 30 April 2024, Silicon Valley Arbitration & Mediation Center published its SVAMC Guidelines on the Use of Artificial Intelligence in Arbitration (**SVAMC Guidelines**).[9] These SVAMC Guidelines seem to be the first of their kind and provide for a principle-based framework for the use of AI in arbitration. They are intended to be used in international as well as domestic arbitration and serve as a reference point for all participants in the arbitral process.[10] In addition, in March 2025, the Chartered Institute of Arbitrators issued its Guideline on the Use of AI in Arbitration (Ciarb Guidline)[11] and American Arbitration Association – International Centre for Dispute Resolution issued its Guidance on Arbitrators' Use of AI Tools (AAA-ICDR Guidance).[12] Finally, the VIAC Note on the Use of AI in Arbitration Proceedings (VIAC Note) was published by the Vienna International Arbitral Centre in April 2025.[13]

While all these rules seek to maintain fairness and due process, safeguard confidentiality, or promote transparency, the integrity of the proceedings, and non-delegation of decision-making responsibilities, they are highly abstract and their tailoring to the particular circumstances of the case thus seems necessary. Furthermore, they differ substantially in the regulation of certain institutes such as, e.g., disclosure of the use of AI by arbitrators. For example, under the SVAMC Guideline, disclosure of using AI in connection with an arbitration is generally not required,[14] under the AAA-ICDR Guidance, arbitrators should disclose their use of generative AI tools only if such use has a materially impact on the arbitration process or the reasoning of their decisions[15] and the VIAC Note encourages arbitrators to discuss with the parties the disclosure requirement of the potential use of AI in the arbitration.[16] This discrepancy may stem from the fact that these rules regulate a completely new phenomenon that has not yet been

[9] Silicon Valley Arbitration & Mediation Center (SVAMC). SVAMC Guidelines on the Use of Artificial Intelligence in Arbitration. 30. 4. 2024.
[10] SVAMC. SVAMC Guidelines on the Use of Artificial Intelligence in Arbitration, p. 5.
[11] Chartered Institute of Arbitrators (Ciarb). Guideline on the Use of AI in Arbitration (2025). March 2025.
[12] American Arbitration Association – International Centre for Dispute Resolution (AAA-ICDR). Guidance on Arbitrators' Use of AI Tools. March 2025.
[13] Vienna International Arbitral Centre (VIAC). VIAC Note on the Use of AI in Arbitration Proceedings. April 2025.
[14] SVAMC. SVAMC Guidelines on the Use of Artificial Intelligence in Arbitration, p. 10.
[15] AAA-ICDR. Guidance on Arbitrators' Use of AI Tools, p. 1.
[16] VIAC. VIAC Note on the Use of AI in Arbitration Proceedings, p. 3.

subjected to the arbitration practice or the decision-making of national courts. Thus, they do not reflect best practice regarding the use of AI in arbitration, but merely an idea of such best practice.

Therefore, although these rules may set some standards for the use of AI to promote due process, confidentiality, or integrity of the proceedings, participants to the arbitration are still left with legal uncertainty as to whether following these rules would provide for an issuance of an award that cannot be set aside and can be recognized and enforced. This is also emphasized in some of the rules. For example, the Ciarb Guideline expressly states that

> [t]*he rapid advancement of technology has led to a number of legislative and regulatory initiatives. In the short term, this may lead to uncertainty, as some AI Tools may be banned or restricted in certain jurisdictions. It is, therefore, imperative that the parties' choice of technology and the conduct of a case do not conflict with any Mandatory Rule, applicable laws, regulations or policies, or institutional rules related to the use of AI in an arbitration.*[17]

The lack of rules on the use of AI based on tribunal and court practice requires parties that intend to use AI to some extent in their arbitration to conduct further thorough research of the relevant national legal orders and their detailed assessment in relation to the use of AI. However, many states do not regulate AI at all or to a very limited extent.[18] The parties may also investigate the states' general rules and court practice regarding setting aside an arbitral award.

Importantly, the parties to arbitration proceedings shall take into account the Convention on the Recognition and Enforcement of Foreign Arbitral Award (**New York Convention**) and its interpretation by courts.

This is surely a challenging task with an uncertain outcome.

II. THE STANDARDS UNDER THE NEW YORK CONVENTION

The New York Convention represents one of the most important instruments in international arbitration that requires courts of contracting states to recognize and enforce a foreign arbitral award. The New York Convention also sets an exhaustive list of grounds on which contracting states may refuse the recognition and enforcement of a foreign arbitral award.

The most relevant grounds for refusing to recognize the award with respect to the use of AI seem to be a violation of the right to be heard set in Article V(1)(b) of the New York Convention and a violation of public policy under V(2)(b) of the New York Convention. However, this does not mean that other defenses under Article V of the New York Convention cannot be considered. While, for example, impartiality of an arbitrator may primarily lead to a refusal based on a public policy defense, Borris and Hennecke argue that courts may decline to enforce an arbitral award under Arti-

[17] Ciarb. Guideline on the Use of AI in Arbitration (2025), p. 6.
[18] Stanford University. Artificial Intelligence Index Report. 2025, p. 337.

cle V(1)(d) of the New York Convention for improper tribunal composition or flawed proceedings.[19]

This Article thus only focuses on a violation of the right to be heard and public policy defense, which are discussed *seriatim* below.

II.1 The violation of the right to be heard under Article V(1)(b) of the New York Convention

Under Article V(1)(b) of the New York Convention, recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that the party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present their case.

The first defense under this Article covers the failure to notify the party of the arbitrator's appointment or the arbitration proceedings and also the failure to make such a notification in a proper way. The second defense then aims at a non-exhaustive list of all cases in which a party was otherwise unable to present its case.[20] Since the first defense seems to be less relevant with respect to the use of AI as such, this Article focuses merely on the second defense.

The party's ability to present its own case represents the most fundamental rule of due process.[21] The party may invoke an inability to present its case pursuant to Article V(1)(b) of the New York Convention only on its own initiative[22] and must establish a causal nexus between the claimed violation and the outcome of the proceedings, i.e., the party must establish that, had the claimed violation of its right to be heard not occurred, the outcome of the arbitration would likely have been different.[23]

As explained below, AI may especially have an impact on the party's right to comment on documents submitted by the other party and right to have submissions considered by the tribunal.

II.1.1 The right to comment on documents submitted by the other party

The right to comment on the evidence submitted by the other party is considered to be included in the right to present one's own case. However, the fact that the tribunal

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[19] BORRIS, Christian, HENNECKE, Rudolf Improper Tribunal Composition or Flawed Proceedings, Article V(1)(d). In: Rainmar Wollf *New York Convention: Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 10 June 1958: Article-by-Article Commentary*. Second edition. Munich: C. H. Beck, 2019, pp. 351–353.

[20] SCHERER, Maxi Violation of Due Process, Article V(1)(b). In: Rainmar Wollf *New York Convention: Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 10 June 1958: Article-by-Article Commentary*. Second edition. Munich: C. H. Beck, 2019, p. 291.

[21] KURKELA, Matti S., TURUNEN Santtu *Due Process in International Commercial Arbitration*. Second edition. New York: Oxford University Press, 2010, p. 36; GAILLARD, Emmanuel, SAVAGE, John, FOUCHARD, Gaillard, Goldman *On International Commercial Arbitration*. Hague: Kluwer Law International, 1999, p. 986.

[22] CORDERO-MOSS, Giuditta New York Convention, Article V(2)(b) [Public Policy]. In: Herbert KRONKE – Patricia NACIMIENTO et al. (eds.). *Recognition and Enforcement of Foreign Arbitral Awards: A Global Commentary on the New York Convention*. Second Edition. Wolters Kluwer, 2024, p. 428.

[23] SCHERER, Maxi. *Violation of Due Process, Article V(1)(b)*, p. 298.

does not give a party the opportunity to comment on the evidence does not always constitute a violation of the right to due process unless it is a document on which the tribunal relies to make its decision. Additionally, national courts leave a broad discretion to tribunals to consider the necessity to comment on individual documents provided by one of the parties.[24]

This aspect of the right to a fair trial may be more apparent in arbitration proceedings in which AI has been used. AI may not only review or analyze man-made evidence, but AI can also generate evidence itself.[25] And this may indeed appear to be an issue. Generative AI tools do not provide algorithms on which they generate their outputs, i.e., *black box effect*.[26] Thus, the party to the proceedings may review the data put into the AI by the party that submitted the document, however, the party cannot review the outcome generated by AI. As a result, the party cannot properly comment on such submitted evidence, which may create room for the application of Article V(1)(b) of the New York Convention by national courts of a contracting state. For example, the German court refused to grant a request for enforcement of an award on the ground of violation of respondent's right to present its case in the arbitration proceedings. According to the court, the respondent was not informed of the opposing party's arguments and thus was prevented from properly presenting its claims and defenses.[27]

The Silicon Valley Arbitration & Mediation Center proposed in its draft of the Guidelines on the Use of Artificial Intelligence in Arbitration and opened for public consultation on 31 August 2023 to use AI tools that *'incorporate explainable AI features or otherwise allow* [participants] *to understand how a particular output was generated based on specific inputs'—explainable AI*.[28] Such an explainable AI could provide participants in the arbitration proceedings with the necessary transparency, interpretability, and explainability of the AI's outcome. Yet explainable AI is not the straightforward answer to the above problem because *'many efforts to improve explainability often lead to explanations that are primarily tailored to the AI researchers themselves, rather than effectively addressing the needs of the intended users*' as explained by Bernardo.[29] Thus, even such a case may result in a violation of the right to comment on documents submitted by the other party and eventually in an issuance of an unrecognizable and unenforceable arbitral award in line with Article V(1)(b) of the New York Convention.

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[24] Ibid., p. 318.

[25] MAGÁL, Martin, LIMOND, Katrina, CALTHROP, Alexander Artificial Intelligence in Arbitration: Evidentiary Issues and Prospects. In: Amy Kläsener – Martin Magál – Joseph NEUHAUS (eds.). The Guide to Evidence in International Arbitration. Second edition. *Global Arbitration Review.* 2014, p. 7.

[26] BERNARDO, Vítor *Explainable Artificial Intelligence.* Technology and Privacy Unit of the European Data Protection Supervisor, 2023, p. 3.

[27] Germany No. 28, *Portuguese Company A v. Trustee in bankruptcy of German Company X*, Landgericht [Court of First Instance] of Bremen, 20 January 1983. In: Albert Jan Van Der Berg (ed.). *ICCA Yearbook Commercial Arbitration 1987. Vol. 12.* Deventer: Kluwer Law and Taxation Publishers, 1987, p. 486.

[28] Guidelines on the Use of Artificial Intelligence in Arbitration: Draft of 31 August 2023. Silicon Valley Arbitration & Mediation Center, 31 August 2023.

[29] BERNARDO, Vítor. *Explainable Artificial Intelligence,* pp. 3–4.

II.1.2 The right to have submissions considered

Part of the right to present one's own case is also the right to have a submission considered by the tribunal, i.e., the party may expect the tribunal to consider, review, and deliberate over its arguments and evidence. However, tribunals usually are not obliged to deal with each single argument and supported document, unless they are relevant for the outcome of the dispute.[30]

The problem with the black box and the unreviewability of the AI's outcome in the case of an AI-generated document is also evident here. It is not only important for a party to be able to comment on submitted evidence, but also for the tribunal to be able to assess the accuracy and correctness of this document. Without the underlying algorithm AI used for the outcome, it is not really feasible. The tribunal should therefore carefully consider whether it should take such a document into account for its decision.

II.2 The public policy defense under Article V(2)(b) of the New York Convention

Under Article V(2)(b) of the New York Convention, recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that the recognition or enforcement of the award would be contrary to the public policy of that country.

There is not a single, universally accepted definition, and different perspectives and contexts can lead to varied interpretations. The vagueness and elusiveness of the concept of public policy was already expressed in the 19th century by the English court: *'[Public policy] is a very unruly horse, and when once you get astride it you never know where it will carry you. It may lead you from sound law. It is never argued at all, but when other points fail.'*[31]

The defense of public policy gives contracting states the ability to prevent their legal system from being interfered with by decisions they consider irreconcilable with it. The determination as to what public policy means is therefore a matter for each state.[32] Case law regarding Article V(2)(b) of the New York Convention usually understands a public policy as the core values of a legal system.[33] Unlike the defense under Article V(1)(b) of the New York Convention, the public policy defense might be applied on the court's own initiative.[34] A causal nexus between the violation of public order and the outcome of the proceedings is not required by the New York Convention as such, but best practice demands causality.[35]

The public policy defense covers both procedural and substantive public policy.[36] The national courts may therefore examine the procedural aspects of the award and its

[30] SCHERER, Maxi *Violation of Due Process, Article V(1)(b)*, p. 317.
[31] *Richardson v. Mellish*. The Court of Common Pleas, and other courts, decision, 2 Bing 229, 2.7.1824.
[32] WOLLF, Rainmar Public Policy, Article V(2)(b), pp. 416, 418–419.
[33] UNCITRAL Secretariat. *Guide on the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958)*, pp. 240–243.
[34] CORDERO-MOSS, Giuditta New York Convention, Article V(2)(b) [Public Policy], p. 428; UNCITRAL Secretariat. Guide on the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958), p. 256.
[35] WOLLF, Rainmar *Public Policy, Article V(2)(b)*, pp. 430–431.
[36] Ibid., p. 247.

merits to the extent that it is necessary for the court to determine whether the arbitral award is contrary to the public policy of the country or not. However, this does not mean that the court can review the correctness of the arguments used by the tribunal or its award.[37]

Finally, courts of the contracting states generally interpret a public policy defense very restrictively and require a higher standard of proof than for Article V(1) of the New York Convention. For example, where a violation of due process is not sufficient to establish a breach of public order, it may be considered a breach under Article V(1) of the New York Convention. While some courts find it necessary to distinguish carefully between the grounds for non-enforcement under Article V(1) and Article V(2)(b) of the New York Convention, other courts consider the defenses under both Articles to be duplicative.[38]

In any event, national courts very rarely do not recognize and enforce a foreign arbitral award on the basis of a violation of public policy under Article V(2)(b) of the New York Convention.[39]

II.2.1 Due process

Due process constitutes a fundamental constitutional human right.[40] Therefore, as explained, breach of due process might already represent a defense under Article V(1)(b) of the New York Convention. This overlap between Articles V(1) and V(2)(b) of the New York Convention thus usually results in a party's attempt to raise both provisions as its defense against the recognition and enforcement of a foreign arbitral award.[41]

For example, in *Lihua Song v. Wenbin Que*, a dispute arising out of a shares purchase contract, a Hong Kong court declined to enforce an award issued in the People's Republic of China pursuant to Article V(2)(b) of the New York Convention on the grounds of a violation of respondent's right to be heard, which the court found to be contrary to Hong Kong's public policy. According to the court, a violation of respondent's right to be heard occurred as a result of the misconduct of a member of the tribunal during the online hearing. Specifically, during the online hearing, the arbitrator focused on other activities such as moving between locations or driving, disconnected from the online hearing room or failed to communicate with other members of the tribunal despite their attempt to do so.[42] However, the U.S. court granted the motion to enforce the same arbitral award. Unlike the Hong Kong court, the U.S. court did not find the arbitrator's occasional inat-

[37] UNCITRAL Secretariat. Guide on the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958), pp. 247–248.

[38] UNCITRAL Secretariat. Guide on the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958), pp. 254–256.

[39] CHOI, Susan Judicial Enforcement of Arbitration Awards Under the ICSID and New York Conventions. *New York University Journal of International Law and Politics*. 1995–1996, Vol. 28, Issues 1–2, pp. 206–207.

[40] *See e.g.*, GARRET, Brandon L. *Defending Due Process: Why Fairness Matters in a Polarized World*. Cambridge: Polity Press, 2024, p. 28.

[41] UNCITRAL Secretariat. Guide on the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958), p. 156.

[42] Hong Kong No. 41. Song Lihua v. Lee Chee Hon, High Court of the Hong Kong Special Administrative Region, Court of First Instance, Construction and Arbitration Proceedings No 111 of 2022, 24 August 2023. In: Stephan W. Schill (ed.). *ICCA Yearbook Commercial Arbitration 2024. Vol. 49*. Alphen aan den Rijn: Kluwer Law International, 2024.

tentiveness during the online hearing and poor internet connection to be a violation of the right to due process.[43]

Technical development such as online hearings became more widespread in arbitration practice only in the wake of the COVID-19 pandemic.[44] Notably, they are still a relatively new practice. From this point of view, it is hardly surprising that courts took a different position with respect to the arbitrator's conduct during the online hearing and its consequences and reached different conclusions. The same inconsistent decisions with respect to the use of AI can be anticipated. This also makes the incorporation of AI tools into arbitrations rather complicated.

In addition to the aforementioned examples described in section regarding Article V(1)(b) of the New York Convention, the use of AI could also violate the legal principle of equality of arms between the parties under certain circumstances. For example, one can easily imagine a hypothetical arbitration where a multinational company with unlimited financial resources is on one side of the arbitration and a company of local importance is on the other side. The multinational company may afford the top-tier and most expensive AI tools that can choose the most appropriate arbitrator, summarize and analyze the case, prepare a bulletproof argumentation, and even predict the outcome of the proceedings, on the other hand, the local company only has access to publicly available AI. At first glance, this seems no different from cases where a party can afford the best legal representation with unlimited human resources and licenses or experts. And yet, it is different. All tasks are handled by AI and almost immediately. That is indeed a huge advantage.

II.2.2 The impartiality of the Tribunal

Contracting states' courts regard independence and impartiality of the arbitrator as fundamental legal principles.[45] However, the standard for denying a motion to enforce an award on the ground of arbitrator partiality under Article V(2)b of the New York Convention is high.

The French Court of Cassation found a violation of public policy due to the lack of impartiality of an arbitrator and refused the enforcement of an award. According to the court, the arbitrator appointed by one party to two parallel arbitrations between the same parties taking place in France and Italy allegedly provided erroneous information to one tribunal about the other arbitral proceedings which affected the tribunal's decision on jurisdiction.[46] Further, a Swiss court also held an award to be contrary to public

[43] US No. 1071 Lihua Song v. Wenbin Que, United States District Court, Northern District of California, Case No. 23-cv-02159-RFL, 31 May 2024. In: Stephan W. Schill (ed.). *ICCA Yearbook Commercial Arbitration 2024. Vol. 49.* Alphen aan den Rijn: Kluwer Law International, 2024.

[44] BORN, Gary, DAY, Anneliese, VIRJEE, Hafez Chapter 7: Empirical Study of Experiences with Remote Hearings: A Survey of Users' Views. In: Maxi Scherer – Niuscha Bassiri et al. (eds.). *International Arbitration and the COVID-19 Revolution.* Alphen aan den Rijn: Kluwer Law International, 2020, pp. 137–138; BORN, Gary, DAY, Anneliese, VIRJEE, Hafez Remote Hearings (2020 Survey): A Spectrum of Preferences. *Journal of International Arbitration.* 2021, Vol. 38, Issue 3, pp. 291–295.

[45] See e.g., Colombia No. 12, *Tampico Beverages, Inc. v. Productos Naturales de la Sabana S.A.* (Alquería), Corte Suprema de Justicia, Civil Cassation Chamber, SC9909-2017, 12 July 2017. In: Stephan W. Schill (ed.). ICCA Yearbook Commercial Arbitration 2020. Vol. 45. Alphen aan den Rijn: Kluwer Law International, 2020.

[46] France No. 30, *Excelsior Film TV, srl v. UGC-PH*, Cour de Cassation [Supreme Court], 24 March 1998. In: Albert Jan Van Den Berg (ed.). ICCA Yearbook Commercial Arbitration. Vol. 24. Alphen aan den Rijn: Kluwer Law International, 1999, pp. 643 – 644.

policy in line with Article V(2)b of the New York Convention in a case where the arbitrator was appointed based on the contractual provision he himself drew up for the parties and which provided for him—being a counsel of one of the parties—to be a solo arbitrator should a dispute arise between the parties. Additionally, the contract also prohibited the parties from removing, dismissing, or replacing the arbitrator under sanction of a contractual penalty.[47]

The above court decisions confirm that arbitral awards are not only recognized and enforced in cases of a more serious breach of the arbitrator's obligation to act impartially. Such partiality usually relates to the arbitrator's relationship to one of the parties to the arbitration or to the subject matter of the dispute and the arbitrator's interests in the proceedings.[48]

This is however not the case of the use of AI by an arbitrator, and yet it is conceivable that the parties might attempt to invoke the arbitrator's bias. As explained above, members of the tribunal might use AI e.g., to review, analyze, or summarize the parties' arguments.[49] However, AI is not impartial, on the contrary, it provides conclusions based on statistical probabilities derived from existing and available data which can significantly distort the result.[50] For example, using AI for the composition of the most appropriate tribunal for the case would likely result in the tribunal consisting primarily of older men, i.e., the prevalent composition of arbitral tribunals in the past.[51]

It sure raises concerns whether AI used even only for summarizing the main arguments of each party could impact arbitrators' impartiality and eventually their decision making. AI is able to produce very realistic content and provide its users with a detailed reasoned outcome which encourages AI users to see AI as an intelligent and objective tool and thus blindly trust it. Additionally, excessive leaning on AI can limit critical thinking—an essential element of decision making.[52]

For example, the Ciarb Guideline therefore stipulates that arbitrators should use AI only to support its decision making and not instead of it. Arbitrators should also

> *independently verify the accuracy and correctness of information obtained through AI, ensuring their judgment is free from confirmation bias and other distortions. They should conduct their own research, using AI-generated information as a supportive tool, while maintaining a critical perspective to prevent undue influence on their decisions, including through appropriate supervision.*[53]

Even though arbitrators review the outcomes delivered by AI, they still may be influenced by them. However, they can be influenced just as much by anyone else.

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[47] Switzerland No. 30, *Bezirksgericht* [Court of First Instance], Affoltern am Albis, 30, 26 May 1994. In: Albert Jan Van Den Berg (ed.). ICCA Yearbook Commercial Arbitration 1998. Vol. 23. Kluwer Law International, 1998, pp. 758–763.

[48] See also International Bar Association (IBA) Council. IBA Guidelines on Conflicts of Interest in International Arbitration. 2015.

[49] Supra, p. 1.

[50] FELIN, Teppo, HOLWEG, Matthias Theory Is All You Need: AI, Human Cognition, and Causal Reasoning. *Strategy Science*. 2024, Vol. 9, Issue. 4, p. 346.

[51] HAESLER, Janine, ISLER, Tim *Navigating the Main Impacts of Artificial Intelligence in International.*

[52] LARDI, Kamales The Dangerous Impact Of AI On Decision-Making. In: *Forbes* [online]. 30. 1. 2025 [2025-06-25]. Available at: <https://www.forbes.com/councils/forbesbusinesscouncil/2025/01/30/the-dangerous-impact-of-ai-on-decision-making/>.

[53] Ciarb. Guideline on the Use of AI in Arbitration (2025), p. 16.

According to a study from 2024, the risk assessment recommendations made by AI did not improve the classification accuracy of a judge's decision to impose cash bail. In fact, the study found little or no difference between the accuracy of the judge's decision made alone and the accuracy of the judge's decision made with the assistance of artificial intelligence. In more than 30% of cases, the judge did not follow the AI's recommendations and instead rejected them.[54]

While an equivalence cannot be drawn between deciding on bail and summarizing hundreds or thousands of documents, one can see some indication that AI does indeed not influence the judge's or arbitrator's position—or at least it does not have to. Therefore, the use of AI by arbitrators as such cannot be expected to lead to the issuance of a non-recognizable and non-enforceable arbitral award in accordance with Article V(2)(b) of the New York Convention.

In any event, most, if not all, arbitral institutions provide in their arbitration rules that the arbitrators shall disclose any facts or circumstances that may raise questions about their impartiality.[55] The same obligation is also set out in the IBA Guidelines on Conflicts of Interest in International Arbitration.[56] However, as shown above, the guidelines on the use of AI in arbitration do not take a consistent approach to the disclosure of the use of AI by an arbitrator,[57] which may in fact indicate an inconsistent attitude towards AI as such.

As a result, if parties to the arbitral proceedings do not expressly agree on the use of AI by arbitrators in the procedural rules, it may be recommended that the arbitrators disclose the use of AI to the parties. Whether the use of AI by arbitrators can be proven is another question.

CONCLUSION

The use of AI in arbitration brings alongside its unquestionable benefits several such as maintaining fairness and due process, safeguarding confidentiality and the impartiality of arbitrators, securing transparency and the integrity of the proceedings and, eventually, the very issuance of a recognizable and enforceable award.

These concerns are all the greater because there are as of yet no regulations or case law regarding the appropriate use of AI in arbitration at the state level. While there are several soft rules regarding the use of AI in arbitration such as the SVAMC Guidelines, Ciarb Guideline, AAA-ICDR Guidance, and the VIAC Note published by arbitration institutions. s. In fact, the rules represent only an assumption of what best practice might look like.

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[54] BEN-MICHAEL, Eli et al. Does AI help humans make better decisions? A statistical evaluation framework for experimental and observational studies. pp. 1–5. In: *arXiv* [online]. 30. 1. 2025 [2025-06-25]. Available at: <https://arxiv.org/pdf/2403.12108>; ROJAS, Nikky Does AI help humans make better decisions? One judge's track record – with and without algorithm – surprises researchers. In: *The Harvard Gazette* [online]. 14. 1. 2024 [2025-06-25]. Available at: <https://news.harvard.edu/gazette/story/2024/06/does-ai-help-humans-make--better-decisions-artificial-intelligence-law/>.

[55] See e.g., Article 11(2)–(3) of the ICC Arbitration Rules (2021); Rule 19(3)(b) of the ICSID Arbitration Rules (2022); Article 11 of the UNCITRAL Arbitration Rules (2021); Article 11.4 of the HKIAC Administered Arbitration Rules (2024).

[56] IBA Council. IBA Guidelines on Conflicts of Interest in International Arbitration. 2024, pp. 7–8.

[57] Supra, pp. 3–4.

Therefore, these rules do not provide a guarantee that an enforceable award would be issued if they are complied with.

Therefore, parties to arbitration proceedings who intend to use AI in arbitration should also look at other sources that could help issuing an irrevocable, recognizable, and enforceable award. One such source is the New York Convention. The New York Convention enables recognizing and enforcing an arbitral award in countries outside the jurisdiction of the arbitral tribunal. The New York Convention, however, also provides states with grounds on which they may refuse such recognition and enforcement. These grounds include, for example, violation of parties' right to be heard pursuant to Article V(1)(b) of the New York Convention or public policy pursuant to Article V(2)(b) of the New York Convention.

Yet AI appears to pose the greatest risk in relation to preserving due process in arbitration, specifically, parties' right to comment on documents submitted by the opposing party, right to have submissions considered by the tribunal, and the equality of arms between the parties. This can manifest especially in the case where the parties cannot verify AI's outcome due to lack of underlying algorithms AI used for its operations (*black box effect*) or where the parties experience unequal access to AI tools. In order for a violation of due process to be considered grounds for non-recognition or non-enforcement of an award under Articles V(1)(b) and V(2)(b) of the New York Convention, such a violation must be significant and a causal nexus for the tribunal's award. Although these are more likely to be exceptional cases, it cannot be ruled out that contracting states would not recognize and enforce arbitral award issued in cases in which AI has been used.

Moreover, even though AI is not impartial and may influence the attitudes and perceptions of its users, it does not appear that arbitrators relinquish their independence in the use of AI to the extent that their award would not be recognizable and enforceable in line with Article V(2)(b) of the New York Convention. However, it can be recommended that arbitrators disclose to the parties any use of AI on their part to avoid any potential disputes about their impartiality.

In the current AI boom, it cannot be predicted how fast and in what way AI will advance over the next few years. This technical uncertainty may prevent parties from implementing AI into arbitration. This, in turn, would prevent practice from being developed and legal uncertainty and high risk for the parties intending to use AI during the arbitration would persist. Therefore, it does not seem unlikely that the parties would prefer to take a more conservative approach and disallow AI tools in arbitration or use it only to a limited extent. For example, in *Walnort v. Armenia*, the parties to the arbitration expressly excluded the use of AI in the proceedings in their procedural order: *'Artificial intelligence shall not be used in drafting the Award or in the Tribunal's decision-making process.*'[58] Such a conservative approach could cause arbitration less interesting.

In any event, as one participant of the 2025 Survey stated: *'Either you adapt to the tools, or the market will leave you behind*'.[59] And that seems to be apt.

[58] Walnort v. Armenia. ICSID Case No. ARB/24/20, Procedural Order No. 1, 2. 4. 2025, p. 4.
[59] QMUL, White & Case. 2025 International Arbitration Survey, p. 30.