

Editorial

In this issue, Professor Doug Jones and Robert Turnbull examine, and indeed question, the efficiency of the current practice of witness statements. As they explain, witness statements have become a ‘vehicle for the making of legal submissions’ commending, and at times speculating, on every matter which is implicated in a dispute, including third parties’ conduct. Professor Jones and Turnbull argue that, in this form, witness statements are wasting time and driving up costs, and propose a reformed witness statement procedure whereby witness statements should give the tribunal nothing more and nothing less of a factual account of what a witness heard, saw or thought at the time of the events the subject of the arbitration. It is a thought-provoking and considered proposal and I am pleased that we have the opportunity to publish their article at the *Journal*.

But the article, I think, raises a broader question, namely the efficiency of the whole arbitral process currently. While originally the process of arbitration was guided by few general principles, mainly party autonomy and due process, today the arbitral process is dense and heavily regulated by a wide number of instruments, including national laws, institutional rules, guidelines, codified best practices and, lately, codes of ethics. There is hardly any aspect of the arbitration process that remains unregulated: the organization of the proceedings is guided by the UNCITRAL Notes on the Organization of Proceedings; the evidentiary process is guided by the International Bar Association (IBA) Guidelines on the Taking of Evidence; the conduct of the arbitrators is guided by the IBA Guidelines on Conflicts of Interest; codes of ethics are promulgated by professional and institutional bodies such as the American Arbitration Association and the Chartered Institute of Arbitrators.

However, despite or rather because of the plethora of new rules regulating the arbitral process, proceedings in international arbitration have become more complex, and often challenging, nowadays. Counsel tend to make more procedural requests and applications (e.g., determination of preliminary matters, security for costs, applications to exclude evidence, several requests for document production, introduction of new claims and counterclaims) and many procedural issues often become unnecessarily contentious (e.g., timetables, mode of hearing, hearing bundles). Speaking in public lectures and conferences, many distinguished colleagues have introduced excellent ideas to increase the efficiency of arbitration

‘Editorial’. *Arbitration: The Int’l J. of Arb., Med. & Dispute Mgmt* 88, no. 3 (2022): 337–338.

proceedings. For example, David Rivkin has unveiled the Town Elder rules which focus on the resolution of matters on an issue-by-issue basis, while Lucy Reed has proposed that the procedural timetable includes an in-person meeting (a 'retreat') for the tribunal to study the file with the goal of arriving together at targeted directions to the parties for the hearing. More recently, Sundaresh Menon called for 'post-pandemic reinvention of procedure'. The 'Doug & Turnbull proposal for witness statements' will now be added to the list of proposals for the effective management of arbitral process.

Of course, the challenge now is how to turn the new ideas to practice. The field of international arbitration has a track record of innovative responses to practical problems, as the recent experience with the pandemic demonstrated. However, while we all agree that arbitrators and parties should not apply the same template procedural orders to organize the proceedings, the reality is that proposals for procedural innovation do not always find their way to practice.

Stavros Brekoulakis
Editor-in-Chief
London, June 2022