

New York

A New Home of International Arbitration?

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Paris and London—traditionally the global centers of international arbitration—should begin to worry. Over the past few years, New York has undertaken a thoughtful, multifaceted effort to attract more international arbitrations. Collaborative and coincidental initiatives from the private sector, multiple bar associations, and the judiciary are making New York into a honeycomb of resources for arbitrators and parties, creating a serious, perhaps unprecedented, challenge to traditional arbitration epicenters in Europe.

Consider these milestones: In June 2013, the New York International Arbitration Center opened its doors in midtown Manhattan. In September 2013, the New York Supreme Court promulgated new court rules and dedicated a specific commercial division judge to handle all disputes related to international arbitration. That same month, the International Chamber of Commerce (ICC) established its first office in midtown. Ditto for the Chartered Institute of Arbitrators—a storied London institution that helped make that city into an arbitration powerhouse. And for the first time, the New York-based International Centre for Dispute Resolution—the international arm of the American Arbitration Association—administered over 1,000 cases. All the while, New York has organically grown some of the most sophisticated dispute resolution organizations and academic programs in the world. The Big Apple is firing on all cylinders.

Where did this sudden confluence of energies come from? Who are the key players? And how will this groundswell of focus affect the booming market for international dispute resolution?

Since the early days of maritime arbitration through the industrial revolution, Europe has been the conventional king of international arbitration. But over the past few decades, as the number of global arbitrations climbed—partly due to the rise in international contracts with mandatory arbitration clauses and the increase of bilateral investment treaties—that throne became more desirable.

New York is hardly alone in its strategic maneuvers to gain the attention of the arbitration world. Increased commerce and investment in Asia, Africa, and Latin America have also led to efforts by countries in those regions to bolster their own dispute resolution forums. In fact, Hong Kong enacted new arbitration laws in 2010 to enhance its attractiveness for parties, and Ghana did the same in 2011. France, fearing that it was being left behind, revised its laws in 2011 as well. And these are just a few examples.

Creating a Task Force

New York's heavyweight training officially began in October 2010, when Stephen Younger, then-president of the New York State Bar Association, created the Task Force on New York Law



in International Matters. The group included experts on commercial litigation and dispute resolution from all over the world. Its mission was to “undertake a systematic review of New York law as an international standard and the use of New York as a neutral forum for resolving international disputes in arbitration and in the courts.” In other words, to make New York into a new arbitration powerhouse.

Despite the huge number of arbitrators and litigators in the city, the task force concluded in its report released in June 2011 that there was a global “absence of familiarity with the advantages of New York law and New York as a forum for international dispute resolution among lawyers drafting or advising on governing law clauses and dispute resolution provisions in international agreements.” And despite New York’s prominence in international business, finance, and law, international litigants remained wary. To address these and other concerns identified in the report, the task force suggested that all international arbitration matters be assigned to a single courtroom of the Supreme Court of New York, County Commercial Division. This, the task force advised, would create greater efficiency and predictability, and also put New York in line with the court systems of competitor cities.

The group also advocated the creation of a dedicated center for international arbitration in New York. Despite many facilities available through administering organizations and law firms, space is a constant source of anxiety in the city. It is expensive and hard to secure, especially for foreign litigants, and

a centralized facility could act as a promotional organization while also providing the venue. Similar centers already exist in London, Zurich, and Singapore.

In addition, the task force emphasized the importance of communications and perception, particularly with foreign firms, corporate counsel, and litigants who view litigation in the United States as an inevitable quagmire of endless discovery and a sandpit of motion practice. The task force advised greater education through publications, web resources, and programming that could debunk these myths. These communications would “highlight the distinctive qualities and advantages of New York substantive law, encourage greater study and knowledge of New York law in its own right and in comparison with the law of other leading jurisdictions in the international marketplace for governing law and choice of forum, and solicit suggestions and ideas to make New York law and a New York forum even more hospitable to litigants in resolving international disputes.” A glossy brochure advocating arbitration in New York—featuring quotes from then-Mayor Michael Bloomberg and New York Court of Appeals Chief Judge Jonathan Lippman—accompanies the report.

The financial stakes of these changes could be significant. According to one consulting firm’s analysis, if the business of dispute resolution in New York were to increase by just 10 to 20 percent, it could produce about \$200 to \$400 million in incremental revenues annually for New York’s law firms. In today’s tenuous legal market, those sums are too large to leave on the table.

While many bar association reports are rarely read by policy wonks, much less implemented by legislators, the work of the Task Force on New York Law in International Matters is an astounding exception. New York has already made enormous strides on several of the report's goals over the past few years.

The task force's report gathered the energies to create the New York International Arbitration Center (NYIAC), which opened its doors on June 17, 2013. The NYIAC allows recognized dispute resolution organizations to use its state-of-the-art facilities for hearings, mediations, and conferences. The new digs are so advanced that they feature language interpretation booths, so that parties can bring interpreters with them, similar to what one might find at the United Nations. Located at 150 East 42nd Street, the NYIAC is easily accessible from Grand Central Station, Times Square, and Penn Station.

Not only is the NYIAC already busy hearing arbitrations—it has heard seven in its first six months alone—it has also hosted two continuing legal education seminars, one on ethical issues in arbitration and the other on emergency arbitrators and emergency relief. The plan is to combine the provision of space with advocacy and education by scheduling at least one major symposium each quarter.

The NYIAC is becoming more and more visible by partnering with the New York State Bar Association's International and Dispute Resolution Sections and more than 37 leading commercial law firms in New York. It is also forging relationships with academic partners that have internationally regarded dispute resolution programs such as Cardozo Law School, Columbia Law School, and New York University Law School.

Specialist Judge Appointed

New York's judiciary also supported the task force's recommendations, and on September 16, 2013, Chief Administrative Judge A. Gail Prudenti designated Hon. Charles E. Ramos of the Supreme Court's Commercial Division to handle all international arbitration cases in New York County. These include all cases brought under Article 75 of New York's Civil Practice Law and Rules (CPLR) or under the Federal Arbitration Act, 9 U.S.C. § 1 et seq. Cases in the Commercial Division are usually assigned randomly to one of the justices. But, under the new procedures, a case filed as an international arbitration matter will be sent directly to Justice Ramos.

This assignment approach follows a trend in jurisdictions worldwide to delegate international arbitration-related matters to a specialist judge, panel, or court. Britain, France, China, Sweden, and Switzerland all have designated courts or judges to hear cases that challenge or enforce arbitration awards. In 2010, at least three more jurisdictions established similar specialized courts—Australia, India, and Ireland. The reasons are obvious.

A dedicated court is likely to be more aware of the specific and complex issues that arise in international arbitrations, and it can develop streamlined processes and a consistent body of law to ensure predictability. This designation is not expected to affect significantly Justice Ramos's existing caseload because relatively few international arbitration disputes arrive in court to begin with, and most issues are handled directly by the arbitrators or administering organization. However, Justice Ramos will handle several types of motions that arise in the arbitration context, including deciding whether matters are arbitral, reviewing motions to confirm or vacate arbitral awards, and determining whether to compel or stay an arbitration proceeding.

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By resolving motions in a matter of days, rather than months or years, and by referencing foreign treaties and administering rules in his newly revised and published procedures on international arbitration, Justice Ramos hopes to change the perception that American litigation is inefficient and just downright slow, and to demonstrate to foreign litigants and attorneys that they will be treated the same way in New York as they would be treated elsewhere.

Also important to New York's jockeying for a seat at the global arbitration table is that the International Chamber of Commerce's International Court of Arbitration opened a new Manhattan branch in September 2013. The ICC, the largest and most prominent international arbitration forum in the world, is based in Paris. Although it recently opened a regional office in Hong Kong, this is its first official foray into North America.

This move has historical, philosophical, legal, and cultural significance. The ICC's constitution states prominently: “To further the development of an open world economy . . . international commercial exchanges are conducive to both greater global prosperity and peace among nations.” International arbitration promotes that goal because it enables business entities to go beyond each nation's particular legal framework and focus on the parties' intentions, and according to a survey published by Queen Mary University Law School in London, international arbitration is preferred in cross-border disputes because of the

flexibility in procedure, privacy, ability to select the arbitrators, and enforceability of the awards. Now, thanks to its new presence in New York, North American parties, counsel, and arbitrators will have convenient access to the services of the ICC Court.

This has made Parisian arbitrators nervous. France knows that it must work to remain one of the most arbitration-friendly jurisdictions in the world as it competes with its longtime competitors London and Geneva, and even with emerging countries in the arbitration field such as Dubai and India. Switzerland, too, has been making inroads by establishing the Swiss Chambers' Arbitration Institution and revising its arbitration rules in 2012 to make it easier to achieve quick resolution in disputes below a certain figure. Concurrent with the growing trend to modernize arbitration rules across Europe, New York is making a serious effort to capture more arbitral hearings. And the opening of an ICC branch in Manhattan is an enormous step in that direction—both symbolically and practically.

Moving New York to the next level requires changing hearts and minds.

But the Big Apple still has some hurdles to overcome. Ask anyone—practitioners, judges, academics, and innovators involved in New York's recent initiatives—and they will confirm what Justice Ramos articulated: “Lawyers are worried, even sophisticated lawyers, that they'll come arbitrate in New York and just languish. They think the motions will take forever to decide, there will be a million appeals, and the courts won't honor the finality of the arbitration agreements.” But, he insists, nothing could be further from the truth.

Indeed, the New York Court of Appeals has repeatedly emphasized “the long and strong public policy in favor of arbitration,” and it has reiterated that “New York courts interfere as little as possible with the freedom of consenting parties to submit disputes to arbitration.” *Stark v. Molod Spitz DeSantis & Stark, P.C.*, 9 N.Y.3d 59, 66 (2007). What's more, New York's CPLR Article 75 governing arbitration, originally enacted in 1920, was the pioneering prototype of all the state arbitration statutes and served as the model for the Federal Arbitration Act, enacted by Congress in 1925. Nevertheless, stereotypes persist.

Samaa Haridi, a partner in Weil, Gotshal & Manges'

International Arbitration Practice Group in New York who has handled international arbitrations all over the world, sees “a misperception that you get more American-style litigation automatically.” Alexandra Dosman, NYIAC's executive director, agrees. “The benefits of arbitration are efficiency and also finality. There's a tremendous fear of American-style discovery, a discovery timeline that's far longer and more expensive than the parties want.” That stereotype is not totally unfounded. Federal Rule of Civil Procedure 26, which governs discovery in U.S. federal litigation, is generally very liberal. Under Rule 26(b)(1), “Parties may obtain discovery regarding any non-privileged matter that is relevant to any party's claim or dispute, including the existence, description, nature, custody, condition, and location of any documents or other tangible things and the identity and location of persons who know of any discoverable matter.”

Haridi emphasized the importance of educating the litigation community on both sides of the Atlantic, including judges, to combat the persistent stereotype. “Domestic arbitration and international arbitration are two separate fields. Judges should appreciate the implications of being asked to intervene in the context of an international arbitration proceeding,” she said, noting that NYIAC has set up a committee to further judges' understanding of international arbitration.

Nonetheless, global litigants remain apprehensive about New York, in part, because of the patchwork of state and federal laws governing arbitration. George Berman, director of the Center for International Commercial and Investment Arbitration at Columbia Law School and chief reporter for the forthcoming *Restatement of International Arbitration* for the American Law Institute, is working on a broader level to add consistency to American arbitration law. “The goal of any restatement is to rationalize the law and make it more coherent. There's a lot of uncertainty about ground rules in the United States,” he observes. “The *Restatement* will bring more predictability and coherence.”

Until then, New York has nonetheless positioned itself to be, at minimum, among the key players invited to the party. No one can predict the effect of the new center, the specialized judge, and the glossy brochures. Moving New York to the next level requires changing hearts and minds. What is clear is that New Yorkers are willing to invest resources in this effort, even without an absolute guarantee of success.

Where will the throne of international arbitration be situated? And is this conversation a mere dalliance on the road to online-only dispute resolution? No one has answers to these questions. But New York has never been a city to evade challenges. “The true New Yorker,” wrote John Updike, “secretly believes that people living anywhere else have to be, in some sense, kidding.” Apparently, New Yorkers feel the same way about people who arbitrate elsewhere. ■