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Acquisition of Skills and Accreditation in International Arbitration

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Acquisition of Skills and Accreditation in International Arbitration*

by DOUG JONES**

I. INTRODUCTION

THE PAST two decades have seen significant growth and expansion of arbitration on both a domestic and an international level. The benefits of flexibility, neutrality and control, coupled with the security of an internationally enforceable award and statutory support of the arbitral procedure, have led to the establishment of arbitral institutions, procedures and laws worldwide.

Due to the growing popularity and use both domestically and internationally of arbitration, it is crucial that the training of practitioners and arbitrators be regulated and rigorous. This popularity can be largely attributed to the formality and security offered by arbitration, in the form of an internationally enforceable agreement, an established and time-tested set of domestic and international rules and laws governing the process, and an internationally enforceable, final and binding award. The success of arbitration thus rests heavily upon the respective skills of practitioners and arbitrators. When considering what should be taught under the banner of international arbitration, therefore, two fundamental areas that must be considered are the acquisition of skills and the related topic of accreditation.

II. ACQUISITION OF SKILLS

A strong skill set is a critical aspect of arbitration practice. When considering the way to teach arbitration skills, the fundamental question is: which skills are required? This depends on what arbitration is trying to achieve. International arbitration aims to bridge cultural, procedural and legal divides. As such, the

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consensual, if not cooperative, nature of arbitration requires a distinct and unique approach to traditional litigious skills and practices, despite having much in common with them.

There are three distinct skill sets involved in the practice of international arbitration: the advocacy skills necessary for the representation of parties in international arbitrations, the adjudicative skills required by those sitting as arbitrators, and the skills required of local court judges in relation to international arbitral proceedings and awards. Added to these three skill sets there are arguably two others: the skills required of the parties to international arbitrations themselves, and those required of the 'behind the scenes' administrative players.

(a) Skills of Advocacy and Representation

(i) The theory

It would be a truism to say that the success and thus the attractiveness of arbitration as a means of resolving disputes depend upon the quality of the arbitration process, and that this quality in turn rests upon the skills, training and experience of those involved. In order to ensure that the benefits of the arbitral process are fully realised, a detailed understanding of the theory of the rules and laws relating to international arbitration by those representing parties in such matters is crucial.

It is important to note that international arbitration is not a mere 'add-on' to traditional skills of advocacy and representation. International arbitration is a highly specialised area and necessitates specialised knowledge. It is vital that advocates involved in international arbitrations learn about their area.

The requisite specialised knowledge of the theory of international arbitration can be divided into several important areas.

KNOWLEDGE OF THE PRIVATE INTERNATIONAL LAW FRAMEWORK IN WHICH INTERNATIONAL ARBITRATION OPERATES

International arbitration is an autonomous and evolving area of international commercial law, in which complex problems of private international law may apply. International arbitrations involve the interplay of at least four different types of law:

- the law governing the capacity of the parties;
- the law governing the arbitration agreement;
- the law governing the seat or procedure of the arbitration, which involves narrow questions of law in relation to how the arbitration is run, and wide questions of law in relation to how the arbitration is controlled; and
- the law(s) governing the resolution of the dispute, *i.e.*, the law(s) applied to the merits of the dispute.

The skills of an advocate must therefore involve a firm understanding of the complex interaction between procedural and substantive law, and in particular, of

the processes involved in making the appropriate choice in each case. This in turn will entail an analysis of what is procedural and what is substantive, and the impact of each choice on the arbitration as a whole.

KNOWLEDGE OF THE PROCEDURAL RULES WITHIN WHICH THE PROCESS OCCURS

The arbitral procedure is usually governed by the seat of the arbitration, *i.e.*, the jurisdiction which has ultimate supervisory control over the arbitration. As the degree and extent of control vary between jurisdictions, the procedural rules can have a significant impact on the conduct of proceedings and, indirectly, on the outcome of the arbitration. A thorough knowledge of these rules is therefore critical to the effective representation of parties to an arbitration.

For example, advocates should be aware of how the procedural rules in each jurisdiction will affect the degree of court control over specific processes such as discovery, subpoena and interim orders, as well as over the arbitration process as a whole, for example with respect to the removal of arbitrators and the setting aside of awards. This commences with an appreciation of the local arbitration law referable to international arbitration in the jurisdiction whose procedure will govern the arbitration. Representatives should be aware of the practical application of the law in potentially relevant jurisdictions, and importantly, of the attitudes of the judiciary in each towards the conduct of and procedure for international arbitrations.

This in turn necessitates an understanding of the character and breadth of application of the UNCITRAL Model Law in the various jurisdictions, and a grasp of the differences in its application between the jurisdictions that have outwardly adopted the Model Law, but with varying degrees of adherence. For example, in the Asia-Pacific region, only Australia has adopted the Model Law without reservation (although Australia's adoption is not without additions). Many other jurisdictions have adopted the Model Law with slight amendments or modifications, or have enacted domestic law which largely reflects the principles of the Model Law, without directly adopting it. On the other hand, Indonesia's domestic arbitration law does not incorporate the Model Law at all, and in Vietnam the Ordinance on Commercial Arbitration 2003 reflects some of the principles of the Model Law, but falls short of the Model Law in a number of areas.

Thus, another critical aspect for prospective advocates to international arbitrations is a familiarity with regimes other than the Model Law. Importantly, this includes those jurisdictions which have not adopted the Model Law, despite significant arbitration activity. The most obvious example of this is England and Wales.

KNOWLEDGE OF ISSUES RELATING TO THE ENFORCEMENT OF ARBITRAL AWARDS

One of the central benefits of international arbitration over transnational litigation is the enforceability of the outcome. It is therefore imperative that persons seeking to represent parties to an arbitration understand the issues relating to enforcement of international arbitration awards. This, of course, involves a comprehensive knowledge of the Convention on the Recognition and

Enforcement of Foreign Arbitral Awards 1958 (the 'New York Convention') and its effect in Convention countries, but it also includes an understanding of the processes for enforcement where the country or countries involved are not signatories to the New York Convention. A knowledge of the effect of the Model Law (where applicable) will therefore also be relevant. In addition, advocates should be aware of the ICSID procedures and the public international law effect of treaties and similar conventions.

An example of a further area of specialisation is the law relating to Free Trade Agreements (FTAs), and, in the case of investment arbitrations, bilateral investment treaties (BITs). There is now generally accepted to be a very important subset of BITs between individuals and states, which is based on the rights of individuals against states and, as such, is of an essentially different character to consensual international arbitration. This is an important related area involving an interaction between concepts of public international law and private commercial law.

Additionally, advocates should be conceptually aware of the effect that foreign mandatory laws may have upon international arbitrations. What is the effect of these mandatory laws where parties have agreed upon other, perhaps conflicting, laws or rules of law in relation to the arbitration? For example, if the parties to an arbitration choose the seat of their arbitration, but hold the hearing in a place other than the seat, do the mandatory rules of law within the place of hearing have any application to the arbitration? Often such laws demand to be respected in spite of any contrary agreement between the parties. Advocates should be aware of the possible interference of mandatory laws and the appropriate way(s) of dealing with this interference.

(ii) The practice

An understanding of the theory behind international arbitration is thus critical to those representing parties in international arbitrations. To this theory needs to be added a comprehensive knowledge of the practice of international arbitration.

International arbitration approaches dispute resolution differently from traditional litigation. Advocates need to be more flexible, have a more sophisticated approach to evidentiary matters and be able to present their case within a framework with which they are not familiar, or where traditional frameworks no longer apply. For example:

- Advocates do not appear in front of judges, and may not even appear in front of other lawyers. An arbitral tribunal may, and generally does, consist of individuals with an eclectic mix of cultures and experience and varying degrees of legal knowledge and training.
- International arbitrations may not involve traditional discovery. For example, many arbitrations prefer 'evidence gathering' to traditional discovery.
- The approach to traditional pleadings is often different in international arbitrations. Court rules, technical assertions, admissions or denials may

not be useful. There may be memorials instead of pleadings, as a result of having no discovery.

- International arbitrations may involve 'stop clock' hearings, in which advocates have a limit of 100 hours to present their case in full.
- The style of advocacy and document presentation may be more conversational (although nonetheless rigorous), and the archaic language often employed in traditional litigation, while it may not be inappropriate, may not be optimal either.
- A 'parochial', overly technical or overly procedural approach to advocacy in international arbitration may not be as effective as advocacy which is focused on the conceptual heart of the case.
- Parties to an international arbitration may authorise arbitrators to act as *amiable compositeur* or *ex aequo et bono*, whereby the dispute is determined on the basis of what is fair and equitable and not according to the strict application of a particular governing law.

In short, advocacy must be practised differently. This involves the following.

KNOWLEDGE OF THE VARIOUS WAYS IN WHICH ARBITRATIONS CAN BE CONDUCTED

This relates in particular to the process by which the parties agree to arbitrate and, in doing so, agree to adopt institutional or other rules. Thus, advocates should understand the differences between and features of ad hoc and institutional arbitration, as well as the relative appropriateness of each approach to various types of disputes and parties.

Where institutional arbitration is adopted, advocates should be aware of the varying degrees of administrative assistance offered by the institutions, and the procedures and assistance offered by each in relation to the appointment of arbitrators and other key elements of the arbitration. Familiarity with the various institutions, their respective rules and the differences between them and, in particular, the effect of the adoption of institutional or other arbitration rules upon the existing structure of the procedural law governing the arbitration, is a critical aspect of representation of parties in an arbitration.

FAMILIARITY WITH THE DIFFERENCES BETWEEN THE PRACTICE OF INTERNATIONAL ARBITRATION AND THAT OF LOCAL COURT PROCEEDINGS

One of the most important skills of representing parties in international arbitration is the 'internationalisation' of the process. It is vital that potential advocates understand how to leave behind their domestic 'baggage' and move towards a broader understanding of the cultural differences at play in international arbitrations and, more specifically, of the tensions between the various legal cultures. From a procedural perspective, this involves leaving behind the common or civil law procedure of the local courts; instead, the procedure is 'internationalised'. The internationalisation of the process is necessary in order for international arbitration to deliver many of the benefits that it offers, such as a neutral and delocalised forum within which disputes may be resolved, and the ability to avoid submitting to foreign courts or to their interpretation of foreign law.

An important step towards this has been the development by the International Bar Association (IBA) of its Rules on the Taking of Evidence in International Commercial Arbitration (IBA Rules). These rules, which provide procedural mechanisms for the presentation of documents, witnesses and site inspections, and for the conduct of evidentiary hearings, were adopted in June 1999, and have been specifically designed to be used together with institutional or ad hoc rules governing international arbitrations. The IBA Rules represent a significant step towards the internationalisation of international arbitral procedure, by combining procedural requirements from both the common and civil law systems. They allow for the efficient and effective conduct of international arbitration proceedings between parties from differing legal traditions, while enabling the parties to retain full control of the arbitral procedure by giving them the option to adopt the Rules in whole or in part, or to use them simply as guidelines in the development of their own procedures. Importantly, the work of the IBA is likely to encourage further steps towards the harmonisation of the differences between legal regimes with respect to the conduct and procedure of international arbitration.

EXTENSIVE AND ONGOING TRAINING

This is particularly important, given the speed at which international arbitration law and practice is developing. There is room for the teaching of international arbitration law in universities, either as a stand-alone subject or as a component of the study of international commercial law, or even of conflict of laws. There is room for further training at the post-graduate level. Training courses and seminars presently provide opportunities for the learning and development of those currently practising or entering the practice.

FREQUENT AND SUSTAINED EXPOSURE TO EXPERIENCED PRACTITIONERS

Finally, there is the opportunity to allow advocates and arbitrators to come together and exchange ideas in a training context. Furthermore, there is value to be had in the involvement of local court judges in these exchanges, as they can bring a unique and useful perspective to international arbitration fora, and would themselves benefit from exposure to the perspectives of practitioners.

Exposure to those experienced as advocates, those experienced as adjudicators and to judges of local court proceedings would enrich the experience of individuals currently practising as advocates, and allow potential advocates to gain a fuller and more practical perspective on the conduct and procedure of international arbitrations, and the various ways in which the practice of international arbitration can be approached.

The 'theory of practice', namely, the skills enumerated above, is something that can be taught and taught effectively. However, the purpose of training is to overcome the disadvantage that those who do not have the opportunity actually to practise international arbitration have against those who do. To this end, exposure to a range of views of experienced practitioners can make a very real and valuable contribution to the learning process.

(b) Adjudicative Skills

The second broad area that must be discussed when considering how to teach the skills associated with and required for international arbitration is the acquisition of the skills of adjudication associated with being an arbitrator. Given that an arbitration will only ever be as good as its arbitrator(s), this is a critical aspect of the teaching of international arbitration.

Arbitrators aim to provide an effective and enforceable outcome to a dispute, while seeking to give the parties what they want from dispute resolution. They must be well versed in law and the ways in which they can make international arbitration responsive to the needs of the parties. In this respect, arbitration is more responsive than domestic or even international litigation. Conceptually, many of the same skills required of advocates will also be required of arbitrators. However, these concepts will be applied in the context of adjudication, rather than representation.

In order to conduct an arbitration effectively and efficiently, an arbitrator must be able to:

- control and manage the arbitration proceedings from an administrative point of view;
- accurately assess the evidence and apply the relevant principles of law; and
- exercise adjudicative or judicial skills.

The acquisition of these skills depends upon a combination of observation, exposure, participation and experience.

(i) The 'inside view'

The skills of an adjudicator can only be theorised to a limited extent – a true understanding of how to adjudicate can only be gained by a close observation of the process at work. In this respect, the opportunity, where available, to sit with a tribunal and observe the decision-making process in order really to grasp how and why a tribunal works in practice is an invaluable tool for the potential arbitrator. The growth of the concept of the tribunal clerk or administrative assistant is evidence of this and can add enormous value to those seeking to build and consolidate adjudicative skills. However, given the percentage of matters that are referred to arbitration compared with the number that actually proceed to an award, the opportunity to see through an entire case is far more limited in the case of international arbitration matters than it is for court proceedings. Thus, the experience to be gained by observation as a tribunal clerk is by no means as advanced nor as extensive as that gained by a judge's clerk.

(ii) Exchange of ideas and techniques

In addition to observation of the process in the setting of the tribunal itself, for those who are experienced as arbitrators there is an enormous capacity to

increase the skill sets of those who are looking to gain such expertise, through the exchange of ideas and techniques on adjudication between those currently engaged in the practice. Discussion of new ideas, suggestions for the improvement of current practices and the sharing of experiences provide new or inexperienced adjudicators with exposure to a wealth of knowledge and experience which has been acquired over many years, in many different countries and under a variety of different legal regimes. Furthermore, as experienced arbitrators bring to the mix their individual views on change and reform, these exchanges can also prove a valuable forum for the development of arbitration law in general.

The LCIA[1] Symposia have proved immensely effective fora for such exchanges in which, in lieu of static presentations and 'talking heads', there is an opportunity for short and sharp exchanges between experienced practitioners of 'war stories' on a wide range of topics. The LCIA Symposia allow participants and observers to pick up, in a relatively short space of time, a range of current ideas and trends which would otherwise be quite unavailable. While this process could be difficult to replicate in an academic context, there is the potential for institutions such as the LCIA to add greatly to the acquisition and development of the adjudicative skills of future arbitrators by allowing observers who are learning to be part of the process. Thus, the fora could perhaps be expanded to involve not only participants but also observers, who could use their observations as part of the training process.

(iii) Experience

Observation of and exposure to the workings of the arbitral tribunal and the viewpoints of experienced practitioners are invaluable for the development of strong adjudication skills. There is also significant value to be had by learning about and gaining experience of arbitration in a domestic context. There is nothing more valuable and important to the acquisition of skills of adjudication than the experience to be gained by actually sitting as an arbitrator, and in particular by making mistakes, which are always of greater benefit when experienced first-hand than they are when relayed by someone else. Admittedly, this article is concerned with how to teach international arbitration and not with how to pick oneself up from the 'potholes' of experience. It should be noted, however, that there are, nevertheless, limitations on what can be taught and learnt.

(c) Skills of Local Court Judges

As mentioned above, there is the potential for significant value to be added to the process of skills acquisition for both advocates and arbitrators by means of the participation of local court judges in exchanges between international arbitration practitioners.

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[1] London Court of International Arbitration.

To begin with, it is important that judges understand what advocates, arbitrators and, indeed, the parties to an international arbitration themselves are trying to achieve. This is necessary because, despite moves to make international arbitration 'float free' from local court control, it must nonetheless be regulated (albeit with a light hand) by the local courts of the jurisdiction in which the arbitration is held, or by those in which an award is sought to be enforced. As international arbitration is a form of 'privatised justice', courts may have to intervene in the proceedings and it is important that all the potential players in an international arbitration understand one another to the greatest extent possible.

Thus, local court judges have a role to play and it is crucial that they understand what the court is supposed to do vis-à-vis international arbitration. One of the most important examples of the need for this understanding by judges is the local standard annulment, whereby international arbitral proceedings are annulled because of the application of a local rather than an international standard. Through the involvement of judges in the teaching of international arbitral skills, this international standard can be clarified for the benefit of all participants in international arbitrations. Further, it would allow local court judges to understand why it is important that they apply the international standard over the local one in the case of international arbitrations.

(d) Skills of the Parties

There is arguably a fourth category of skills necessary for the effective conduct of international arbitrations – those of the parties themselves. Needless to say, this article does not propose that parties to international arbitrations be trained or accredited as arbitration practitioners. However, it is suggested that there is a closer link between users and conductors of international arbitration than there is between users and conductors of litigation, and that, given the more consensual nature of international arbitration, there is an opportunity for practitioners to engage with users. For example, the development of fora in which parties to international arbitration could participate and interact with practitioners would enable parties better to understand the difficulties encountered by practitioners, and would allow practitioners to appreciate more fully the problems encountered by those who use the system.

A better understanding between practitioners and parties would allow for a smoother resolution of disputes, and at the same time would assist in the development of the law and conduct of international commercial arbitration through exposure to a whole new perspective – the outsider's view.

(e) Behind the Scenes

Thus far, this article has concentrated on the skills and development of those players who find themselves 'in the limelight' of international arbitrations. As a final point under the topic of skills acquisition, attention should be drawn to the crucial but often overlooked role played by those who work behind the scenes.

It should be recognised that the Secretariats of the various arbitral institutions and other administrative actors have a key role to play which, although largely 'hidden', can have a considerable influence on the efficiency of the process as a whole. For example, the competent performance of back-end functions such as the approval, correction and/or redrafting of awards is critical, and the skills required to perform such tasks are varied, specialised and often far from innate.

Thus, the learning and development of the actors 'backstage' should not be neglected. To this end, there is considerable scope for training programmes run by the institutions themselves. There is possibly even a potential benefit to be had through the interaction of front and back end players, in order to further the understanding of the players from each end, of the functions and needs of those from the other. This would help to develop a smoother transition between front and back end processes, and consequently, a smoother and more efficient outcome to the arbitration as a whole.

III. ACCREDITATION

Directly related to the acquisition of skills as advocate and arbitrator is the issue of accreditation. What accreditation is there presently available, how is it achieved and how is it sustained?

(a) Types of Accreditation

The types of accreditation currently available for arbitrators in international arbitrations can be divided into a number of categories.

(i) Membership of institutional Panels

Membership of the Panels of international arbitral institutions is one of the ways of achieving accreditation as an arbitrator. Institutional Panels are lists of individuals who have satisfied the institution of their expertise as arbitrators. These lists are used by institutions to appoint arbitrators directly, or to recommend arbitrators to parties who are looking to appoint them themselves. Panels are generally exclusive lists, such that an institution will not recommend or appoint an arbitrator who is not listed amongst those on the Panel.

The Panel method has several distinct advantages. It is a useful and efficient way for parties, particularly those unfamiliar with arbitration, to quickly and easily select qualified arbitrators known in the field. Further, in the event that one or more arbitrators is appointed by the institution, parties have the certainty of knowing in advance those from amongst whom the selection will be made. Significantly, arbitrators typically have to satisfy certain standards set by the institutions before they can be appointed to a Panel, which ensures quality arbitrators with certain, pre-agreed levels of experience and proficiency.

However, Panels are not common to all arbitral institutions. Some institutions, such as ACICA,[2] the CIArb,[3] IAMA[4] and SIAC,[5] have Panels; others do not. For example, both the ICC[6] and the LCIA have 'sources of information' on available arbitrators and their relevant expertise, instead of a fixed Panel from which appointments must be made. This is also beneficial, as it provides a useful guide for parties selecting arbitrators without restricting their freedom to control the arbitral procedure, which is one of the important benefits of international arbitration as a dispute resolution mechanism.

A further issue with regard to Panels is that they are not implemented in a uniform manner across those institutions to which they are common. Thus, details such as the size and number of Panels within an institution, the method of selection to the Panels, the standards to be satisfied in order to be selected and the length of tenure of arbitrators, differ from one institution to another. The following comparison of the institutional Panels of SIAC, IAMA and the CIArb provides an example of just a few of these possible variations.

SIAC[7]

SIAC has two different Panels of arbitrators: a Regional Panel, consisting of over 130 arbitrators located within the ASEAN region, and an International Panel, made up of 68[8] members from countries physically located beyond ASEAN. SIAC also maintains a reserve list of arbitrators. There are minimum standards of admission to both Panels and the reserve list. Common to all three are a minimum of 15 years' post-qualification experience, tertiary education and the attainment of Fellowship at SIAC or an equivalent professional institute. All persons admitted must be between 35 and 75 years of age, and must not have any criminal convictions nor have been removed by a court or other authority while acting as an arbitrator. In addition to this, applicants seeking admission to the Panels must have acted as an arbitrator in five or more cases and have written a minimum of two arbitral awards. Where these standards are not met, various discretionary criteria, such as refereed statements from internationally recognised arbitration practitioners, may be sufficient for admission.

IAMA[9]

IAMA has a Register of Practising Arbitrators, members of which are arranged into a number of Panels according to their professional and occupational fields.

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2 Australian Centre for International Commercial Arbitration.
3 Chartered Institute of Arbitrators.
4 Institute of Arbitrators and Mediators Australia.
5 Singapore International Arbitration Centre.
6 International Chamber of Commerce.
7 *See generally*, www.siac.org.sg/panel.htm
8 As at 18 February 2005. *See* www.siac.org.sg/intnal-panel.htm
9 *See generally*, www.iama.org.au/accredpolicy.htm

In order to qualify for the Register, arbitrators must complete specified training courses in arbitration law and practice and other aspects of commercial and contract law and pass an examination. Applicants are then assessed by the Interviewing Committee, which must include a National Councillor and/or Chapter Chairman (or former Chairman), as well as a member from the same profession as the applicant. The Committee awards each member a grade from 1 to 3 (1 being the highest). Grading takes into account a wide variety of factors, including judicial capacity, relevant experience, legal knowledge, knowledge of arbitration law and practice and personality. An initial grading above Grade 3 is rare.

All Grade 1 and 2 arbitrators undergo a triennial review, while members of Grades 2 or 3 may apply for regrading where two years have lapsed from the date of initial grading, or 12 months from the date of the last unsuccessful application for regrading. Alternatively, arbitrators can apply to be regraded after completing at least 25 hours of 'eligible activities' (*i.e*, approved activities concerned with non-curial dispute resolution) during the 12 months prior to the application to be regraded. In addition, the Institute has a mandatory Continuing Professional Development (CPD) policy, which requires all graded arbitrators to undergo a minimum of 75 hours of approved training every three years, with a target of 25 hours per year.

CIARB[10]

CIArb has both a Register of Arbitrators and a Panel of Chartered Arbitrators, which was introduced in 1999 as the 'gold standard' for practitioners. Panel applicants must achieve either Chartered Arbitrator status or satisfy the criteria for inclusion on a particular specialist Panel. In addition, they must attend specialised CIArb training courses (covering the laws of contract, tort and evidence and the law, practice and procedure of arbitration), and pass an examination in reasoned award writing before they can qualify as a Member or a Fellow (Chartered Arbitrator). Less than 50 per cent of applicants pass the exam the first time around, demonstrating both the rigour with which the skill is assessed by the Institute and the difficulty of acquiring the skill.

Applicants for Chartered Arbitrator status must also have completed a period of pupillage with a Pupil Master, or have had at least 10 years' litigation and/or active arbitration experience. CPD is compulsory for all Panel Members (whether of Chartered Arbitrator status or otherwise), who must obtain at least 60 CPD points (for specified, approved activities) over a three-year period, with at least 30 points directly relating to the area or areas in which they receive appointments.

Clearly, while the Panel method of accreditation has many benefits to offer, it is patchy and non-rigorous in its implementation and understandably may prove difficult for those 'outside' to understand or penetrate. Uniform use across institutions and transparent, comparable standards would greatly enhance the value of Panel membership as a form of accreditation.

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10 *See generally*, www.arbitrators.org/applic/how.htm

(ii) Academic qualifications achieved through courses

The second category of international arbitration accreditation is the achievement of academic qualifications through the passing of theoretical and practical courses in arbitration and related areas. It is suggested here, however, that these courses are not accreditation in and of themselves but, rather, serve as a stepping stone towards accreditation as a practitioner in international arbitration. This is demonstrated by the Panel method of accreditation employed in certain arbitral institutions, as described above, in which the passing of relevant training courses is but one step (albeit an important one) towards the achievement of accreditation via appointment to a Panel.

(iii) Internationally recognised status

The third category of accreditation is the bestowing upon an individual of a status which is arrived at after a period of academic achievement and rigorous practical assessment in the context of a teaching process. The most obvious example of this type of accreditation is the CIArb's recently introduced status of Chartered Arbitrator, which serves a dual purpose: the accreditation of arbitrators of domestic disputes and those of international disputes.

Although the Chartered Arbitrator status of the CIArb arguably belongs to the category of institutional Panel Membership, the concept of an internationally recognised 'gold standard' status of accreditation, awarded only to eminent candidates after considerable training and experience, is a viable method of accreditation for Panelled and non-Panelled institutions alike, and would assist in the internationalisation of the arbitral process in general by providing a uniform and international form of accreditation to arbitrators, rather than accreditation associated only with a particular institution.

At present, however, there are not many examples of this type of accreditation available. Indeed, it would appear that the CIArb is currently the only body that is really working hard to establish a level of credibility with its accreditation. The Institute is currently working to raise even higher the standards of international arbitration accreditation, in conjunction with partners in China, Russia and the Middle East. Consequently, it is fair to say that it is the most broadly recognised form of international arbitration accreditation presently available.

(b) International versus Domestic Arbitration Accreditation

An aspect of accreditation which has not been the focus of discussions to date but which is nonetheless important, is the distinction between the expertise and accreditation of arbitrators involved in domestic arbitrations and that of arbitrators involved in international arbitrations. Although they have many features in common, there are several important differences between international and domestic arbitration proceedings, such as:

- different applicable laws;
- different interpretation of similar provisions (such as provisions relating to which types of disputes may be arbitrated);
- different rules;
- different approaches to the issues of enforcement and setting aside of awards; and
- different degrees of court interference in and control of the process.

In light of this, it follows that the accreditation available to practitioners should reflect these fundamental differences by differentiating between the expertise and qualifications relevant to and necessary for arbitrators in each of the two.

To this end, the International Diploma programmes of institutions such as the CIArb, Queen Mary College and King's College are a useful step in the transition from domestic to international practice. Despite the value of such courses, a sufficient distinction between international and domestic skill sets is still lacking at present, and this is an issue which should certainly be considered to a greater extent when determining the most effective and appropriate ways in which international arbitration should be taught and accredited.

(c) Currency of Accreditation

A final and significant issue related to the achievement of accreditation is the way in which it is kept up-to-date, once obtained. In these days of CPD, it is crucial that arbitrators, once accredited, continue their learning and development on an ongoing basis. This is particularly important because international arbitration is a rapidly expanding and developing area of law, in which great change has already taken place over a relatively short period of time. Indeed, the question of how accreditation is refreshed, in terms of training and skill set, should be just as important as the issue of how it is achieved in the first place.

Although equal weight is not presently accorded to these two subjects, currency of accreditation is slowly beginning to be addressed. A number of the large, well-known arbitral institutions, such as IAMA, the CIArb and the ICDR,[11] now have CPD policies in place, and many of these entail mandatory CPD for Panel members (where applicable) and strongly encourage it for other practitioners, members and/or course participants.

This is, however, another area of international arbitration accreditation which lacks uniformity and which could benefit from implementation of CPD policies across all institutions and further consideration and improvement of these policies, in order to accord to the issue of currency of accreditation the importance it requires and deserves.

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[11] International Dispute Resolution Centre (part of the American Arbitration Association).

IV. CONCLUSION

As this article demonstrates, there are two very important and distinct skill sets involved in international arbitrations: those of advocates and those of arbitrators. The skills required of both those representing parties in international arbitrations and those adjudicating disputes as arbitrators are diverse and can be most effectively taught through the combination of a wide variety of methods and resources. One of the most valuable resources available to new or inexperienced arbitration practitioners is the knowledge and expertise of experienced practitioners, and while this important resource is currently utilised to a certain degree, there is room for an even greater harnessing of the knowledge of the experienced in the training of the inexperienced. This would also benefit the practice of international arbitration law as a whole, as improvement of the skill sets of those entering the practice of arbitration would enhance not only the calibre of participants but also the quality of arbitrations and of the outcome, and thus the satisfaction of the parties and the popularity of arbitration as a means of commercial dispute resolution.

Accreditation of practitioners is an important offshoot of skills acquisition, although as the foregoing discussion reveals, it is an area that is in need of universality and, to a lesser extent, uniformity. Moves have already begun to improve accreditation methods and standards. In the meantime, however, an awareness of the advantages and shortcomings of the various forms of accreditation presently available to practitioners of international arbitration will enable further improvement and development over the coming years.