

***Instead of a foreword: What arbitration is about –  
or: how to win the Moot.***

Dear Reader and Co-Moot Participant,

It is with great delight and pleasure that the Global Arbitration Team of Baker & McKenzie embraces this opportunity to introduce you to Professor Huber's and Professor Mullis' new work on "The Law of International Sales under the Vienna Convention". Certain to become one of the standard works on the CISG, this textbook will not only be an extraordinarily valuable resource for practitioners working in the field of international contract law. It will also provide you as a participant in the 15th Willem C. Vis International Commercial Arbitration Moot with both profound analysis of the CISG and its structure as well as an abundance of further references to academic work and case law on the CISG. On your way to the final rounds of the competition, this source on the CISG will without doubt come in handy.

***Arbitration is the Number One mechanism of international  
dispute resolution***

But, of course, the Moot is not only about the CISG. Just as much, and arguably even more, the Moot is also a celebration of the success of international arbitration. Today, as the Moot approaches its 15<sup>th</sup> year of introducing students into the world of international trade law and dispute resolution, it has become probably the single-most important event in this field. Attended not only by students who, by their mere participation, document to have a vision where the future of trade law is sure to lie, the Vienna Moot and its recent offspring in Hong Kong attract arbitration and dispute resolution specialists of the highest profile from all over the world. And all of these participants – students and practitioners alike – join in this celebration because international arbitration is the one field which maybe like no other serves as proof that we can overcome the confinement of state borders and globally share the idea of fair and amicable dispute settlement the same way that trade has overcome these borders and goods and commodities are shared. In this respect, international arbitration is both the reflection and the propellant of what we have in recent years come to term "globalization". And as our world continues to become more "globalized", arbitration will continue to become more and more important, too. It does not take the gift of clairvoyance to predict that arbitration will, therefore, grow as a field and call for more and more specialized practitioners.

But why is that so? Why has arbitration become the number one means of dispute resolution in international trade? Why do more than 85 % of all international commercial contracts worldwide today contain arbitration clauses? Some say it is for reasons of effectiveness: Arbitration is more expeditious and less costly than lengthy state court litigation. Others say it is because arbitration

offers confidentiality: Parties do not want to read their names in the papers and that is why they choose arbitration over public state court proceedings. Again others will argue that having your dispute decided by an arbitral tribunal will ensure enforceability. After all, the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958, or – as it is often called – New York Convention, has been adopted by some 130 countries. In theory, it is easier to have a Vietnamese arbitral award be enforced in Zimbabwe than a Swiss court decision in the United States. Another very pragmatic explanation is that the parties to a transnational contract are usually unable to agree that their disputes should be resolved in the local courts of one party's home country. Nobody wants to litigate in a court with unfamiliar procedural rules and in a foreign language. Fear of bias and – in some cases – also of corruption might add to those concerns. Under such circumstances the agreement to arbitrate the dispute appears to be a fair and, more importantly, easy to negotiate compromise.

***Why is that so? Because arbitration offers choice.***

While these considerations, if accurate, certainly are important, we believe the vital aspect of the constant rise of arbitration is a different one: It is freedom of choice. In arbitration, parties have ample choice: They can choose the law which applies to their dispute, who will decide their dispute, where their dispute will be decided, in what language their dispute will be decided, whether there will be oral pleadings or written submissions only, if there will be written witness statements, if there will be discovery of documents, if there will be depositions, or whether witnesses will be examined by the arbitrators or by counsel. And while this freedom of choice brings deliverance from constraints, it also brings deliverance from fears and reservations. It is because of arbitration that the parties do not have to subject themselves to a legal system that may be unknown and even bizarre to them. None of the parties have to defend their case before a court which they may perceive as biased in a country which it is strange to them. Rather, they are at liberty to choose a neutral panel and a procedure that reflects both parties' origins and interests. Granted such liberty, parties will enter into contracts with foreign partners far more comfortably than if the possibility of a dispute conjures the prospect of dubious and incalculable litigation in a place where one feels alien. The case is easy to make: International arbitration facilitates international commerce.

***And this is where the trouble starts because...***

But you may have guessed it: With the freedom of choice comes the burden of choosing, and this burden is only increased by the fact that both parties have to make that choice together. It is one thing to be able to pick a law. It is another to agree on one. Just the same, it is one thing to be able to pick a procedure.

Again, it is another to agree on one. The differences in our legal systems may not always be vast. But they may be decisive. And so the history of international commercial arbitration has always also been a history of the clash of legal systems. Parties often deplore that. But from a lawyer's perspective this feature of arbitration adds dramatically to its fascination. What can be more thrilling for an internationally orientated and culturally open-minded lawyer than to study this clash of legal cultures in real life cases?

***... there are quite some differences between the common law and the civil law system.***

Let us consider for a moment: If we look at the two dominant strata of law – the continental civil law approach and the Anglo-American common law approach – we will find a number of differences that seem almost irreconcilable. Most of those differences are based on the two different concepts of those legal systems: It is a principle under the common law tradition that the dispute should be decided based upon the objective truth. Who should find out about this truth? The Anglo-American law tradition believes that nobody is keener to reveal such truth than the opposing parties. Thus, it comes as no surprise that the common law system vests a lot of power in the parties to determine how to run the proceedings. The result is a somewhat “sporting theory of justice”, with two attorneys competing against each other with the judge or arbitrator as referee, ensuring that the basic notions of fairness are observed. And the continental civil law approach? Its underlying concept is more to solve the conflict than to find the objective truth. Thus, the judge or arbitrator takes a much more active role in the proceedings, very often combined with an attempt to settle the case. Instead of trusting the parties' counsel to reveal the objective truth – if there can be such kind of truth at all – the system relies on the skills of the trained judge who is supposed to distinguish right from wrong.

What does that look like in practice? According to the common law system, the objective truth can only be verified and confirmed if the parties are given access to the information which they need to present their case. Hence, there must be a pre-trial discovery which opens the other side's archives to the discovering party's inspection. Under the continental tradition, on the other hand, the parties must, simply put, make their case with what they have. They are expected to have assembled their evidence before they turn to the court. Pre-trial discovery would violate this principle. There are good and sound arguments for either approach. But one must be aware that they are different, and immensely so. So what will the parties agree on? Is there actually a chance that they will agree on anything? A Swiss respondent will complain bitterly if he is ordered by the tribunal to produce thousands of e-mails and to translate those e-mails into English. The respondent may even state that such a procedural order amounts to a serious miscarriage of justice. But his American counterpart on claimant's

side will argue that not allowing such discovery will amount to a denial of justice. Who is right? Is anybody?

Another difference lies in how witnesses are examined: In most civil law countries, where the judge is expected to take on an active role, it is also primarily the judge who will question the witnesses. He acts as an inquisitor – hence “inquisitorial system” – and counsel will either ask only a few questions at the end, or none at all. Contrary to this, in most common law countries, the attorneys will examine, cross-examine and re-cross-examine the witnesses, while the judge sits by and listens to the answers given to the two adversaries – hence “adversarial system”. So, if you are counsel in an international arbitration, which of these will you prepare for?

Another example is that of cost re-imbursement: Under the so called American Rule, each party bears its own costs in lawyers’ and court fees. Under most continental systems, the failing party must compensate the prevailing party for its costs. It is not hard to foresee that this difference is of particular economic interest to the parties. So which will it be?

***So let the parties decide – if only they would!***

You may answer: Whatever the parties have chosen. And you would be right, if only the parties did make such choice. Often enough, they do not, and almost never do they address these specific problems. What the parties do instead is to select a set of rules, like the UNCITRAL Arbitration Rules, the ICC-Rules, the AAA-Rules, the DIS-Rules or any other set of institutional rules. At least in part, these rules were born out of the idea to find basic principles which parties from different legal traditions can agree on. At this, some succeed more, others less. In any event, in this respect, these rules are the very embodiment of both the struggle over principles and the successful overcoming of this struggle which, one could say, lie at the heart of international arbitration. The best example for this duality of international arbitration yet are the Rules on the Taking of Evidence in International Arbitration of the International Bar Association (IBA-Rules) which formulate a compromise between the common law and the civil law tradition with respect to the taking of evidence.

However, these rules – UNICITRAL, DIS, AAA, ICC, LCIA, IBA or any other – are not exhaustive. Very often, they will give much leeway to the arbitrators, and more even to interpretation. This is a good thing, because arbitration must be flexible. But it is also reason for the fact that the struggle or traditions, albeit lessened, continues. Arbitrators with different backgrounds will promote different interpretations of the same rule. And judges presiding over awards will add their views, too. Therefore, international commercial arbitration is prone to many

dynamics, always in motion, and since it is still a young discipline, it has preserved a lot of its initial impulse.

***A Best Practice Standard is emerging, and you have to be prepared for it.***

Then again, certain principles receive common recognition and are on the verge of becoming international standards: The IBA-Rules, for example, are immensely successful, and today in international arbitrations, arbitrators turn to them even though the parties have not explicitly chosen these rules to apply. That is because these Rules, like other rules, guidelines and principles, are more and more commonly recognized as “Best Practice” standards – something you really cannot go wrong with. Hence, international arbitration is consolidating, forming its very own law. But new developments are afoot, and new problems will arise.

So, apart from the many dogmatic problems connected with international arbitration and the various national and international bodies of law that govern international arbitration, it is the particular quality of international arbitration as a blend of (legal) cultures that requires special expertise and skill in an arbitration lawyer. International law firms of repute recognize this necessity. Many have formed practice groups which specialize in international arbitration and have established a large basis within their firm to be able to meet the requirements of today’s complex arbitral proceedings. At Baker & McKenzie, for example, our Global Arbitration Team comprises some 600 attorneys in 70 offices in more than 50 jurisdictions. Each of these attorneys is not only an expert in international arbitration and international commercial law. They all have also either studied or worked abroad. This is essential for understanding the possibilities offered, the forces working and the pitfalls hidden in international arbitration. And quite a few of us have laid the ground for this understanding as students participating in the Moot.

***This is where the Moot meets reality.***

The Moot is a reflection of all of these particularities and challenges. It welcomes arbitrators and “counsel” from every jurisdiction and every tradition in the world. Those who preside over your case and who read your briefs are as likely to be from Australia, the Bermudas and Chile as from Austria, Bahrain and China, and opposite counsel may be with a prestigious firm from Argentina, Belarus or the Czech Republic. As traditions vary, so will approaches: An arbitrator from the civil law tradition may interrupt you right away and start asking questions while an arbitrator from a common law country may listen quietly and then, at the very end of your pleading, ask you about something from twenty minutes ago. And as approaches vary, so will expectations: An arbitrator from the common law

system is more likely to prefer a positivist approach to understanding the law or a contract and will therefore expect you to work with the language of a statute or of a contractual clause. An arbitrator from the civil law tradition, on the other hand, may look for the purpose behind a statute or clause and ask you whether this applies to the case at hand or what the parties' intentions were when they drafted the clause. This is what you have to deal with. Both in the Moot and later in practice.

### ***Some good advice***

Of course, you participate in the Moot only because it is so much fun, you learn so much, and both Vienna and Hong Kong are a real treat in spring. We applaud this attitude, it is the right one. For the very few who come to the Moot also to compete (shame on you), it is wise to always consider the two described legal concepts and the procedural features resulting from them. And it might be wise to also consider some of the following advice on how to write good briefs and plead well.

### ***Tell your story***

As a student, what you usually focus most on is knowledge of the law. After all, that gets you good grades. But knowledge of the law alone does not win real cases, and it does not win the Moot, either. What wins cases is to tell your story. To tell your story means to present the facts in a way that everyone who reads or hears it will invariably want to believe you. When you succeed at this, the arbitrators will ask themselves what the other side could possibly submit that should keep them from granting the requested relief (if you are the claimant) or from dismissing the claim (if you are the respondent).

To tell your story requires that you leave no logical gap. Everything must be plausible. Every event will appear as an automatic consequence of the previous. A good story will leave the reader or listener identifying with your client, thinking "That's what I would have done" or "That's what I would have thought, too". To get there, you must arrange the facts. Now, don't misunderstand: Arranging does not mean distorting. But it means to direct the tribunal's attention to certain aspects of a case which might otherwise be overlooked, and to emphasize the importance of these facts for the overall outcome of the case. It basically means to use the facts of a case to your advantage. This, of course, requires three things.

### ***Know the facts by heart***

You must know your case and its facts. Know every line in every letter. Know the names of all parties, all witness, all employees, all sellers, buyers, producers, distributors. Know all the dates and the full sequence of events. Know where something is stated, where someone is quoted, and which information can be found where. This is how you rebut opposing counsel's argument when it comes to it.

Also, understand the facts. If someone says something in a letter the significance or meaning of which you do not understand, try to find out what it could relate to. If an event occurs, find out what consequences it may have – even beyond those plainly stated in the Problem. Of course, this is not as easy as it sounds. In the real world, you might phone your client, an expert or the witness (if you are allowed to do so under your applicable rules of professional conduct). But in the Moot, you cannot do that – largely because no one knows the country code to Equatoriana or Mediterraneo. Nevertheless, try to think of a plausible – and truthful – explanation for what the statement could mean. Or try to find out what might follow from any specific event, in Equatoriana, Mediterraneo, or the real world. Who knows what might come of it to help you tell your story.

### ***Look at everything from every angle***

Sometimes, it may seem as though the facts do not support your position. It may seem as though there simply is no argument to be made. That may be true – but it rarely ever really is in real life. And thanks to Professor Bergsten's ingenuity, it certainly never is in the Moot.

To find your argument, try to look at everything from every possible angle. Almost every factual element can be used to make an argument for either side, almost every event can have implications favorable for your case. The key is to want to find the argument. You can only do that if you shed the skin of a law student and assume the position of an attorney who knows only one goal: to argue his client's case. The practical approach to this is to discuss the case with your team members. Through this exchange of ideas, you will discover aspects of the case that are not at once apparent to the eye.

### ***Know the law by heart***

But to know the facts will not help you to tell your story if you do not know which facts matter. This is where the law comes in: The law will tell you which fact to stress and which to leave to others. This requires that you know the law. But knowledge of the law, or rather: getting to know the law may also show you

further arguments which you have not thought of before. Just as important as it is to know the facts and understand their significance, it is vital to understand the law and its implications. In addition to exploring the facts, explore the law. This is just another way of looking at everything from every possible angle.

But the law is not only a vehicle for the facts. Sometimes, and especially in the Moot, a question of law may be at the center of things. In these instances, the facts are clear, unambiguous, and self-explanatory, and it all boils down to what the law says in one specific set of facts. In this situation, do not be afraid to rely on the law as if it were facts: Make use of the law. Stress what is in your favor. Leave the rest to others.

### ***Do not write a thesis paper***

Most importantly, do not write a thesis paper. A brief in an international arbitration is no scholarly work. It should not be laden with dogmatic reasoning. Likewise, you should not offer authority for each and every statement made on the law. What is commonsense and undisputed among scholars needs no confirmation. Rather, it will make you seem insecure – and, more damaging even in the Moot as much as in real life – it will bore the arbitrators.

As a general rule, you should also not state authorities which do not support your position. You do not write your brief to display knowledge (as a student will), and you also do not write your brief to educate (as a professor will). You write your brief to convince the arbitral tribunal that your client is right (as an attorney should). Very often, this does not even require a reference to the law, at least when the law is rather basic and you can assume that the reader is aware of it. Of course, the more complicated the law or your argument is, the more there may be need to explain what the law is and how your argument relates to it. But that, in turn, does not mean that you should simply state the law. There is no gain in quoting the law (unless there is a specific point to be made by that).

### ***Be simple, but not simplistic***

If you want to tell your client's story, you must write a convincing brief. To be convinced, people must understand your argument. The simpler your argument is, the more easily people will understand. So be simple. The best argument will not help you if nobody understands it.

There is no shame in being simple: To be complex does not mean to be sophisticated; and to be simple does not mean to be simplistic. A simple argument does not indicate narrowness of mind. Quite the opposite is true: Your arguments can be – and should be – as pervasive and encompassing as possible; flatness will not win your case. But you should clad your arguments in

simple terms so that everyone will understand. To do this is not easy. It takes a great mind to understand the essence of a matter and boil it down to its core. It is the lesser mind that will hide behind big words, trying to impress.

### ***Structure your thoughts***

The first step towards succeeding at making complicated things easy is to dissect one large problem into a number of small problems. And the first step towards explaining a large problem is to dissect it into a number of small problems which you explain successively. Structure the problem, and you will automatically structure your thoughts. This is not easily done. Yet a few guidelines exist.

First, know the point you want to make and state it explicitly. Explicitness is of particular importance because you cannot expect every arbitrator to instantly recognize your argument and its significance for your case. Students and young practitioners alike have a tendency to overdue it and to state their point in the beginning, in the end, and in between. This may relate to a rule taught in academic life: "Tell them what you are going to tell them, tell them, tell them what you have told them." This may be a good rule, but beware that repetition will not improve your argument. An attentive reader will need to hear your point only once. Usually, a point is placed either in the beginning or at the end. Which you pick is a matter of taste - and of strategy. If you put your point in the beginning, it will create an attitude of alertness in the reader and lay the ground for the factual or legal argument you are about to make. This may be the strategy for selling an argument that is not too strong to begin with. If you place your point in the end, it may stay longer in the reader's mind. This may be the strategy to get across an argument that is easy to follow because it gives you the opportunity to sum it up and bundle it in one last sentence. There is no dogma. Choose whichever serves your purpose best.

Second, know when you have made your point. Not only will repetition not necessarily strengthen your argument. It may actually weaken it. If you feel a need to repeat your argument over and over, the reason is probably that you are not satisfied with the argument yourself. This notion will rub off on the reader. He will recognize your doubts about your argument, and he will share these doubts as a consequence. Similarly, have the courage to leave out those arguments which are of dubious merit. An argument will not add extra weight to your line of arguments if it is questionable. In fact, it will again create doubt in the reader, inclining him or her to reject your point as a whole. Better do without it, then. In the alternative, if you feel that you should include this particular argument, put it in the beginning of your thoughts rather than at the end, and place the most convincing argument in the end. This way, you will have ended on a strong note, and this is what the reader will remember.

Third, connect your points. The issues that you will deal with in arbitrations – both in real life as well as in the Moot – are often extremely complicated, and so are the questions of law or fact which reflect them. The reader may easily get lost in this complexity. This is why you must virtually take him or her by their hand and guide them through your argument, and even through your brief, step by step. As you proceed from one argument to the next, remember to tell the reader where you are (you, for example, are right now reading about structuring your thoughts), what you are looking at, how this relates to the previous argument or to your line of thought as a whole, and what he should in the end take with him. Some say a good brief or oral pleading is one which one's grandparents would be able to understand, and except maybe for the situation where your grandparents happen to be lawyers themselves, this piece of advice does actually well illustrate what connecting your points means. But keep in mind that, as with every rhetoric technique, it should only be applied when necessary. When your line of argumentation is complex and the reader will be lost without guidance, provide the guidance, and he or she will stay with you. Where your line of argumentation is rather simple (not simplistic, see above) and straightforward, let the reader find his way on his own, for else he will turn away in boredom.

### ***Respect the differences***

We have already talked a great deal about the subtle, but often decisive differences in legal cultures. These differences tremendously affect those who work in international arbitration, both arbitrators and lawyers, in their perception of how a brief should be written, how an argument should be presented, how the law should be interpreted, and how procedure should be structured. To ignore these differences is to fail. To respect these differences is to succeed.

Of course, you cannot be expected, at least not in the Moot, to anticipate the nationalities and preferences of those who read your briefs or listen to your pleadings. But you can be expected to be aware of the fact that because in international arbitration so many people from different legal backgrounds come together, different standards apply. This means that you must heed what we found out above: International arbitration is not domestic litigation. It follows its own rules.

For example, in international arbitration a brief will not necessarily look like a brief which you would submit before your national courts. There may be specific rules in your jurisdiction about whether, and if so how, to address the court, whether you have to state a specific prayer for relief and, if so, where you state it, if you have to separate factual arguments from legal arguments, by when you have to submit certain arguments, e.g. on the admissibility of a claim or counter-claim, by when you have to identify pieces of evidence which you wish to rely upon, if you

have to choose a certain format or even a specific form to file a claim and so forth. As a general rule, none of this matters in international arbitration.

Rather, it is primarily the law of procedure applicable to your specific arbitration which will tell you how to write your brief. The answer lies with the statutory law that governs the arbitration, i.e. the law at the seat of the arbitration (in the past 15 years or so, Danubia has become fairly popular as a venue for international arbitration disputes), the specific set of institutional rules which the parties have chosen (AAA, ICC, LCIA, DIS, UNCITRAL, Swiss Rules, to name but a few), and last but not least the procedural orders issued by the tribunal. And to the extent that these sources are silent, best practice standards may provide direction.

Quite similarly, be sensitive to the fact that because of their different backgrounds, the arbitrators or opposing counsel may not instantly recognize the way you cite authorities. A lawyer from your country may know at once what a certain abbreviation stands for, but the arbitrators may never have heard of the particular court, tribunal, restatement or law review which is being referred to. So, you either spell out the name in full, or you compile a table of abbreviations and of authorities cited and attach these to your brief.

Also, while often convenient, do not give in to the urge of relying on purely domestic authority. Do not quote case law which does not deal with the CISG or with the procedural law applicable to your arbitration. It is not good practice, and it is embarrassing when exposed in the pleadings. If you wish to nevertheless rely on certain authority which is not on the relevant law but which supports your case – for example as an illustration for how a specific statutory language has been interpreted in other bodies of law or how other courts or tribunals have dealt with comparable problems – reveal this openly. This is good practice, and it will add to your credibility.

### ***Be an attorney***

As you will undoubtedly have noticed, the last few pieces of advice were given with the drafting of the briefs in mind. But this is only one part of the Moot. The other - and we would not hesitate to say: the more fun – part are the pleadings in Vienna. Of course, to a large extent, what we have said about drafting the briefs also applies to the pleadings. There, too, you want to tell your story, you want to know the facts and the law, you want to be simple, and, very importantly, you want to structure your thoughts. In many ways, the presentation that you give in the pleadings is only a condensed version of the case which you make in the briefs. But there are some aspects which play a greater role in the pleadings than in the drafting of the briefs, and we should stop to give those some thought.

The foremost is: Be an attorney. When you are in Vienna, the days of law school are behind you. You are not a student who is being examined by

professors and who is trying to give the right answer. You are now a successful trial lawyer, experienced in the ways of international arbitration, with only your client's interests in mind and in full control of everything that is happening in the room. Every word is refined, every turn of events anticipated, every document right where you need it, at an almost unnoticed wink of your hand produced by your co-counsel. You speak clearly, slowly, freely, and with the full security of somebody who has not the slightest notion of doubt in their case. You sit straight, attentive at all times, while radiating an aura of aplomb. You are constantly prepared to either reply to a sudden and unforeseen question or to come to your colleague's aide when the right answer escapes him or her. You never doze off or become absent when your colleague or opposing counsel is pleading. You address the tribunal and opposing counsel directly, preferably by surname and title, you keep eye contact, you wait for the members of the tribunal when they are looking for something, and you make sure that they bear with you when you read from a piece of evidence or quote from the law. You keep track of your time, and you do not exceed it. You focus on your strongest arguments, knowing that the weaker ones will cost you time which they are not worth and you are keeping one ace argument up the sleeve for rebuttal. You are prepared to deviate from your pleading strategy if necessary, and you do not shy away from picking up something and use it for your advantage which opposing counsel or the tribunal have said, knowing that it will demonstrate your flexibility.

Or something like that.

### ***Arbitrate, don't litigate***

What you very often observe in student participants in the Moot is that they do not act as if they were presenting their argument to a panel of arbitrators, but to a bench of Supreme Court justices. They will address the chairman as "Mr. Chairman", the co-arbitrators as "Mr. Arbitrator", begin or end every sentence with "sir" or "madam", and in general, the atmosphere is rather stiff and the students a little hushed up. We perfectly understand why that would be so. But if you think this is the way it is in arbitration, we would beg to disagree. Arbitration is simply somewhat more informal than litigation.

One reason for this is that the world of arbitration, even today, still is a microcosm. Surely, the old guard is making room for the next generation. But even then, international commercial arbitration is a field ploughed by a comparably small number of individuals. And those who are active in the field know, and sometimes have known each other for years, from meetings, seminars, previous arbitrations – and the Moot. It is a little bit like running into old acquaintances over and over again.

Another reason is that in arbitration, roles may change. One day, you are counsel. The next, you are an arbitrator. Of course, as a young professional you

earn your first merits as counsel, and it takes a lot of persistent work to be recognized as somebody who could be entrusted the role of an arbitrator. But in principle, it can happen, and more often than not, it does. More importantly even, is also true the other way around: You may be an arbitrator in one arbitration, you may, if you chose to act for a client, be counsel in the next. Both is part of the game, and every one knows what the other's position feels like.

Finally, arbitrators want to get along with counsel. In most cases, counsel is the one making the pick when it comes to appointing an arbitrator. And while many factors must be considered when you chose an arbitrator "for your client", most arbitration practitioners would probably agree that one is whether you can establish a common ground with the arbitrator – both on a professional and on a personal level.

If you consider these factors, it is easy to understand that arbitration is usually considered to be a little more unceremonious than litigation. It is not casual, and you certainly should, as a mere matter of civility, always act with the greatest respect for the arbitrators and opposing counsel. But all in all, those who meet on the occasion of an arbitration are a little closer to each other than if it were a regular court case. If you keep this in mind in Vienna, you will arbitrate, not litigate.

### ***Enjoy yourself***

Here now comes the most important piece of advice, and it is not easily heeded, either. Regardless of how much work you may have put into the briefs, regardless how much you may have practiced your rhetoric skills, regardless of how many pre-Moots you may have been to and regardless of how many articles you may have read in preparation, in the end you cannot be successful in the Moot if you do not enjoy it, and yourself doing it. The Moot is a fantastic ride, it is a great adventure, full of new challenges, new experiences and new friendships. What you take away from the Moot will stay with you and is very likely to influence your professional life profoundly, whether you win any awards or not. So indulge in this experience and, in particular, in that final week in Vienna. Don't sit in your room, rehearsing pleadings all night, and make this about winning awards. It is not only about that.

*See you in Vienna*  
*The Baker & McKenzie Global Arbitration Team*

P.S.: If you would like to become a part of Baker & McKenzie's Global Arbitration Team or if you would simply like to find out more about us and our practice, contact any of the individuals below or visit our website at [www.bakernet.com](http://www.bakernet.com).

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