Artificial Intelligence and Due Process in International Commercial Arbitration: Safeguarding Procedural Fairness in AI-Assisted Proceedings

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This article examines the due process risks arising from the use of artificial intelligence (AI) in international commercial arbitration, where AI tools are increasingly used for legal research, document review, drafting and case analysis, while also raising concerns regarding equality of arms, the right to be heard, independence of arbitral decision-making, etc. The author argues that the due process assessment should focus not only on AI as such, but on the function it performs in a particular arbitration and on whether that use may substantially influence the proceedings themselves and the award in particular. In the author's view, the recent soft-law instruments issued by arbitral institutions and professional bodies represent an important first response through safeguards such as non-delegation, disclosure, verification, etc., however, their non-binding nature, uneven scope and limited adaptability show the need for a more harmonised, risk-based framework to ensure that AI remains a supportive tool rather than a threat to procedural fairness, legitimacy and enforceability of arbitral awards.

INTRODUCTION

For decades, the central due process debate in international commercial arbitration concerned the independence of human arbitrators, their impartiality, freedom from external pressure and personal judgement based on their expertise. Today, a new and less familiar question has emerged, i.e. what happens to independence when the arbitrator's reasoning is shaped, even partially, by a machine?

International commercial arbitration has traditionally been valued for its flexibility, party autonomy, and capacity to adapt to the practical needs of complex, cross-border disputes. Yet this method of dispute resolution is frequently criticised for the time and expenses involved in resolving such disputes. AI has emerged as an increasingly attractive response to this criticism, offering tools that assist with document review, legal research, and the drafting of procedural documents. However, as these tools progress from purely administrative functions toward more substantive applications, i.e. evidentiary analysis, outcome prediction, and even the drafting of reasoning of the award, a more difficult question arises, i.e. at what point does efficiency come at the cost of the fundamental guarantees that make arbitration legitimate and its awards enforceable?

This article argues that the critical question is not whether AI belongs in arbitration, but how its use in any given case affects the proceedings and the award. Due process risks do not arise from AI as a tool, they emerge from the specific function AI performs, the degree of human oversight involved, and the extent to which its output shapes the outcome.

Since 2024, arbitral institutions and professional bodies have responded with a wave of soft

law guidance, addressing non-delegation of decision-making, disclosure obligations, and verification of AI-generated content. These instruments mark an important first step in the field of AI regulation in arbitration. However, this article demonstrates that their non-binding nature, uneven scope and limited adaptability to rapidly evolving AI technologies limit their effectiveness as a complete safeguard for procedural fairness.

I. DUE PROCESS IN INTERNATIONAL COMMERCIAL ARBITRATION

1.1. CONCEPT OF DUE PROCESS

Due process constitutes a fundamental constitutional human right[1] that guarantees procedural fairness and is widely recognised as reflecting a core principle of justice.[2] It is also one of the basic limits on party autonomy and on the procedural discretion of the arbitral tribunal.[3] International commercial arbitration is widely valued because it allows parties to choose a flexible[4] and efficient method of alternative dispute resolution. However, the mentioned flexibility is not unlimited, i.e. it must comply with minimum standards of procedural fairness. If those standards are not met, the legitimacy of the proceedings may be called into question, and the awards may be subject to challenge at the seat of arbitration or to refusal of recognition and/or enforcement in another jurisdiction.

Due process is often approached from a black-letter law perspective, according to which it is satisfied when the proceedings comply with applicable national procedural law or the rules governing them.[5] However, this approach is clearly insufficient in international commercial arbitration proceedings involving parties from multiple jurisdictions, a tribunal seated in another jurisdiction, and enforcement in one or more states. For this reason, the content of due process should be assessed through a combination of national arbitration laws, international instruments, institutional rules and arbitral practice.

Although the content of due process in international commercial arbitration is not codified in a single comprehensive instrument, instead, it emerges from a combination of international instruments, arbitral practice, and legal doctrine, and is best understood through its core procedural elements. These elements together establish the minimum standards required to ensure the validity and enforceability of arbitral awards.

1.2. RIGHT TO BE HEARD

The first element of due process is the parties' equal right to be heard (*audi alteram partem*). This principle means that each party should be given an opportunity to present its case before an independent and impartial arbitral tribunal.[6] A primary focus of due process analysis is the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (*New York Convention*).[7] Even though it does not provide a general

[1] Brandon L Garrett, *Defending Due Process: Why Fairness Matters in a Polarized World* (Polity Press 2024) 28.

[2] Julian D M Lew, Loukas A Mistelis and Stefan M Kröll, *Comparative International Commercial Arbitration* (Kluwer Law International 2003) 95 (describing due process as one of the 'magna carta' principles of international arbitration); Steven K Davidson and Alexandre Genest, 'Due Process and Procedural Irregularities' in *The Guide to Challenging and Enforcing Arbitration Awards* (4th edn, Global Arbitration Review 2024) (describing due process as 'a cornerstone principle of international law [that] pervades in virtually all administration of justice').

[3] Franco Ferrari, Friedrich J Rosenfeld and Dietmar Czernich (eds), *Due Process as a Limit to Discretion in International Commercial Arbitration* (Kluwer Law International 2020) 4–6.

[4] Xandra Kramer and John Sorabji, 'Arbitralization of Courts: The Role of International Commercial Arbitration in the Establishment and the Procedural Design of International Commercial Courts' (2023) 14(3) *Journal of International Dispute Settlement* 328, 335.

[5] Matti S Kurkela, Santtu Turunen and Conflict Management Institute (COMI), *Due Process in International Commercial Arbitration* (2nd edn, Oxford University Press 2010) 3.

[6] Nigel Blackaby KC, Constantine Partasides KC, Alan Redfern, *Redfern and Hunter on International Arbitration. Student version* (7th edn, Oxford University Press 2022) §10.04, 528.

[7] Kurkela, Turunen and COMI (n 5) 10; Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958.

definition of due process, its perspective is based on a reverse approach, in which the core content of such a 'supranational' due process comes from procedural violations sufficiently serious to render an arbitral award unenforceable.[8] Accordingly, procedural rules whose breach may lead to a refusal of enforcement under the New York Convention, which has been ratified by a large number of independent states,[9] can be regarded as forming part of the minimum standard of international due process.[10]

Article V(1)(b) of the New York Convention states that recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that the party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case. This provision expresses the main idea of arbitral due process, i.e. each party must have a fair and meaningful opportunity to know the case against it and to respond to the case.[11] Article V(1)(d) is also relevant when analysing due process because it permits refusal of recognition and enforcement where the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the seat. In exceptional cases, under Article V(2)(b) of the New York Convention, serious procedural unfairness may also raise public policy concerns.

These provisions establish the right to be heard as a core requirement of international arbitration, the violation of which may directly affect the enforceability of an award.

1.3. EQUALITY OF ARMS

The second element is the principle of equality of arms. This principle requires that parties be treated equally. This principle is explicitly established in Article 18 of the UNCITRAL Model Law on International Commercial Arbitration (*Model Law*), where it is stated that the parties shall be treated with equality and each party shall be given a full opportunity of presenting their case. This principle is considered to be 'the heart of the law's regulation of arbitral proceedings – other Articles provide the detailed mechanisms by which the goals of equality and fair procedure are to be achieved'.[12] It is also one of the main procedural guarantees of the Model Law, which is reinforced by Articles 34 and 36, allowing an award to be set aside or its recognition and enforcement to be refused where a party was unable to present its case,[13] or where the arbitral procedure was not in accordance with the parties' agreement or the applicable law.[14]

These provisions show that due process has both a positive and a negative function. Positively, it guides the conduct of the arbitral proceedings. Negatively, it provides a basis for 'review' after the award has been rendered.

1.4. INDEPENDENCE AND THE IMPARTIALITY OF THE ARBITRATOR

The third essential element is the independence and impartiality of the arbitrator.[15] This require-

[8] ibid 10.
[9] ibid 15.
[10] ibid 16.
[11] Gary Born, *International Commercial Arbitration* (3rd edn, Kluwer 2021) ch 15.
[12] Howard M Holtzmann, Joseph Neuhaus, Edda Kristjansdottir, Thomas Walsh, *A Guide to the 2006 Amendments to the UNCITRAL Model Law on International Commercial Arbitration: Legislative History and Commentary* (Kluwer Law International 2015) 550.
[13] UNCITRAL Model Law on International Commercial Arbitration 1985, with amendments as adopted in 2006, Articles 34(2)(a)(ii) and 36(1)(a)(ii).
[14] ibid Articles 34(2)(a)(i) and 36(1)(a)(i).
[15] Blackaby, Partasides and Redfern (n 6) §4.69, 226; Gary B Born, *International Arbitration: Law and Practice* (3rd edn, Kluwer Law International 2021) § 7.01, 156.

ment is reflected in national arbitration laws and in soft law instruments, including the IBA Guidelines on Conflict of Interest in International Arbitration (*IBA Guidelines*). In particular, in Part I(1), it is stated that every arbitrator shall be impartial and independent of the parties at the time of accepting an appointment to serve and shall remain so until the final award has been rendered or the proceedings have otherwise finally terminated.

Impartiality is a more subjective and abstract concept than independence, as it relates to the state of mind.[16] This requirement reflects the importance of maintaining independent decision-making, which has become increasingly essential considering technological developments, particularly the growing use of AI in arbitral proceedings.

These elements collectively form the core of due process in international commercial arbitration. They establish the minimum procedural conditions that must be satisfied in order for arbitration proceedings to be considered legitimate and for the award to be enforceable. Accordingly, any procedural innovation, including the use of AI, must be assessed in accordance with its impact on the fundamental guarantees of procedural fairness.

II. THE USE OF ARTIFICIAL INTELLIGENCE IN INTERNATIONAL COMMERCIAL ARBITRATION

AI offers a broad range of tools used at different stages of arbitral proceedings, including (1) legal and concept research; (2) editing and proof-reading; (3) translation; (4) interpretation; (5) transcription; (6) the generation of briefing notes, diagrams and summaries of texts; (7) the drafting of communications, submissions and procedural documents; (8) document production and management; (9) the review, analysis and presentation of evidence; (10) the preparation of cross-examination questions; (11) assistance with arbitrator appointments; (12) case value analysis,[17] etc. These tools range from relatively technical systems that assist with classification and information management to more advanced systems capable of generating text and analysing evidence. While these developments promise increased efficiency and cost-effectiveness, they may also reshape the conduct of arbitral proceedings, raising important questions regarding their compatibility with established due process guarantees.

Although there is no universally accepted definition of AI, one of the most comprehensive definitions for the purposes of the question discussed in this article, is established in Article 3(1) of the Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence (*AI Act*), which defines an AI system as 'a machine-based system that is designed to operate with varying levels of autonomy and that may exhibit adaptiveness after deployment, and that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions that can influence physical or virtual environments'. This definition is relevant in the context of arbitration because it focuses on the feature relevant to procedural fairness, i.e. the ability of AI systems to generate predictions, content or decisions that may influence the conduct or outcome of proceedings, even where the basis for those outputs is not fully transparent to the parties or the tribunal.

In the context of arbitration, AI includes a broad range of tools, including machine

[16] Blackaby, Partasides and Redfern (n 6) §4.69, 226.
[17] SCC Guide to the use of artificial intelligence in cases administered under the SCC Rules 2024.

learning systems,[18] natural language processing technologies,[19] and, more recently, generative AI models[20] capable of producing texts, translating documents, conducting legal analysis, and generating summaries. The practical applications of AI in arbitration may be grouped into several categories.

First, AI is widely used in document review and data processing. In complex international disputes involving large volumes of data, AI-assisted tools, particularly text mining technologies[21] and text analysis technologies, enable the rapid identification, extraction, classification, and organisation of relevant documents from unstructured legal documents. This significantly reduces time and costs compared to the traditional manual review process and improves the efficiency and accuracy of proceedings.

Second, AI is increasingly employed in legal research, data analysis and case preparation.[22,23] AI-powered platforms, often enhanced by natural language processing, are capable of analysing large datasets of legal materials, including case law, arbitral awards, and doctrine, in order to identify the relevant authorities and retrieve the relevant information. Such tools may also help generate preliminary legal arguments and drafts of documents, thereby increasing both the speed and quality of legal analysis.

Third, more advanced technologies include predictive analytics[24] and decision support tools. These systems go beyond information retrieval by attempting to forecast potential outcomes based on historical data and by assisting in the evaluation of evidence and legal arguments. In this case, AI begins to support not only case preparation but also legal reasoning. In some instances, these tools may also be used by arbitrators to draft procedural orders and awards.[25]

The increasing use of AI in arbitration is driven by several advantages,[26] including (1) time efficiency and quality,[27] which enable the rapid processing of large volumes of information and reduce the time required for routine tasks and (2) cost reduction, which assists in improving consistency in the analysis of complex data. As it is recognised by soft law instruments, AI offers significant potential to address longstanding concerns regarding the time and cost of arbitration.

At the same time, the integration of AI into arbitral proceedings raises important questions regarding its impact on procedural fairness and due process. While AI can serve as a powerful support tool, its use introduces new risks that may affect the balance between the parties, transparency in decision-making, and the arbitral tribunal's role.

III. DUE PROCESS RISKS ARISING FROM THE USE OF ARTIFICIAL INTELLIGENCE

The increasing use of AI in international commercial arbitration raises significant concerns regarding 'the risk of undermining parties' rights of due process'[28] in arbitral proceedings. While AI tools offer clear advantages in effi-

[18] Magdalena Łągiewska, *Artificial Intelligence and International Arbitration Law. Revolution or Evolution* (Routledge 2026) 12 citing A Smola, SVN Vishwanathan, *Introduction to Machine Learning* (Cambridge University Press 2008); S Shalev-Shwartz, S Ben-David, *Understanding Machine Learning: From Theory to Algorithms* (Cambridge University Press 2014); AC Müller, S Guido, *Introduction to Machine Learning with Python: A Guide for Data Scientists* (O'Reilly 2016).

[19] ibid 35.

[20] ibid 67.

[21] ibid 36.

[22] CIArb Guideline on the Use of AI in Arbitration 2025, Articles 1.2.–1.3.

[23] Łągiewska (n 18) 15.

[24] CIArb Guideline (n 22) art 1.2.

[25] <https://www.adr.org/ai-arbitrator/> accessed 25 March 2026.

[26] Łągiewska (n 18) 109.

[27] CIArb Guideline (n 22) art 1.1.

[28] Dan Perera, Tara M Aaron, 'AI Guidelines in International Arbitration: Revolutionary or Cautionary? A Comparative Analysis' (2025) 42 Arbitration International 585, 586.

ciency and data processing, their use introduces risks that may undermine the fairness, integrity, and legitimacy of arbitral proceedings. AI shall not be considered incompatible with due process. Its procedural significance depends on the type of tool used, the purpose for which it is used, the participant using it, the degree of human oversight, and the extent to which the output may affect the outcome of the proceedings. The main issue is not whether AI should be fully limited in arbitral proceedings, but whether a particular use of AI tools may undermine procedural fairness when assessed in light of the core elements of due process.

3.1. EQUALITY OF ARMS AND TECHNOLOGICAL ASYMMETRY

The first due process concern relates to the principle of equality of arms.[29] As mentioned, AI tools may enable parties to process rapid analyses of large volumes of documents, identify relevant evidence, and develop legal arguments at a level of speed and sophistication difficult to achieve through traditional methods performed solely by a human. In this case, AI may improve access to justice and may even assist parties with lower resource possibilities to reduce the cost of legal research, document review and case preparation.[30]

At the same time, AI may also raise a risk of procedural inequality. Parties with greater financial and technological resources may be able to use more advanced AI systems,[31] thereby gaining a strategic advantage in preparing and presenting their case. This creates a form of 'digital asymmetry'[32] that may undermine procedural balance between the parties and transform arbitration into a contest of algorithms rather than arguments.[33] The unequal availability of AI tools may compromise fair representation and raise concerns about compliance with due process requirements.

The main concern is not that equality of arms requires parties in arbitral proceedings to possess identical resources. This is rarely achievable in practice since arbitration, like other forms of dispute resolution, often involves parties with different financial, technical and organisational capacities. The due process concern arises where such inequality, including unequal access to advanced AI tools, may substantially affect a party's ability to present its case or respond to the case advanced by the opposing party. This risk may be described as one of technological/digital asymmetry, significantly influencing the use of AI not only for administrative tasks but also for the interpretation of evidence, where AI-generated analysis may influence how factual material is presented to the arbitral tribunal and may limit the opposing party's possibility to contest such an interpretation.

Accordingly, equality of arms does not require identical access to AI tools. Rather, it requires that the use of AI should not limit either party's fair or effective opportunity to present its case. The main question is whether the use of AI affects the procedural balance between parties in a substantial way. This assessment can be performed on a case-by-case basis depending on the type of AI tool used, the importance of the AI-assisted task, and the possibility of the other party to understand, verify and respond to the AI-generated result.

3.2. RELIABILITY OF AI-GENERATED OUTPUTS

The second risk concerns the reliability of AI-generated outputs,[34] particularly in the con-

[29] CIArb Guideline (n 22) art 2.5.

[30] CIArb Guideline (n 22) paras 1.1–1.10; Association of Arbitrators (Southern Africa) NPC, *Guidelines on the Use of Artificial Intelligence ("AI") in Arbitrations and Adjudications*, paras 8.1–8.2.

[31] Fernando Messias, 'Artificial Intelligence and International Arbitration: Ethical, Procedural and Regulatory Challenges under the New CIArb Guidelines' (2026) 29 *International Journal of Law and Information Technology* 1, 4, 10.

[32] Messias (n 31) 1, 4, 10 citing Mohammed Zeinu Hassen, 'Beyond the algorithm: applying critical lenses to AI governance and societal change' (2025) AI and Ethics 1–7.

[33] ibid.

[34] Messias (n 31) 1, 4, 7.

text of generative AI systems. Such tools may produce text that seems to be authoritative and legally persuasive but may in fact be inaccurate, incomplete, biased or even fabricated. In the legal context, this problem is especially serious because AI tools may generate non-existent cases, inaccurate citations, and incorrect information in general. This phenomenon, commonly referred to as 'hallucination',[35] poses a serious threat to the integrity of arbitral proceedings.

The widely discussed case of *Mata v Avianca Inc*[36] illustrates the dangers of relying on AI-generated legal authorities without verification, as counsel submitted fictitious case law generated by an AI tool (namely, ChatGPT) and the court discovered that the referenced cases were fake, not existent and described the analysis of the lawyer as 'gibberish'.[37] Although this example arises from litigation, it highlights a broader concern applicable to arbitration: unverified AI outputs may undermine the reliability of legal submissions and, consequently, the quality of arbitral decision-making. Similar concerns have begun to emerge in arbitration practice. In *LaPaglia v Valve Corporation* case,[38] a party sought to challenge an arbitral award on the basis that the arbitrator had relied on an AI tool (ChatGPT) in the decision-making process. Although the challenge was ultimately unsuccessful, it demonstrates growing concern regarding the role of AI in arbitral adjudication.

Accordingly, AI-generated outputs should not be treated as legally binding sources. Rather, they should be understood as preliminary or supporting material requiring independent verification executed by a human, i.e. counsels, experts, arbitrators remain responsible for the accuracy of the materials they submit, use or rely on. This principle is now reflected in several soft-law instruments which emphasise review, verification and human responsibility for AI-assisted work (see Chapter IV).

3.3. TRANSPARENCY, EXPLAINABILITY AND THE RIGHT TO BE HEARD

The third and closely related issue concerns transparency and explainability.[39] Many AI systems, particularly those based on machine learning and large language models, operate through complex algorithms whose internal reasoning processes are not readily accessible to users. This is commonly called a 'black box' problem,[40] which makes it difficult to understand how specific conclusions are reached, even when the underlying data are known. In the context of arbitration, this lack of transparency may limit the parties' ability to challenge the reasoning underlying a decision, thereby affecting their right to be heard. The current soft law notes that the 'inherent "black box" quality may impede human oversight over the accuracy of decisions or predictions produced by the AI Tool'.[41]

In arbitration, this lack of transparency may affect the right to be heard. Algorithmic capacity and the risk of inaccurate outputs may undermine procedural fairness if parties are unable to meaningfully engage with AI-assisted reasoning. The parties must have an opportunity to know and respond to the material on which the arbitral tribunal relies. If AI is used for research and related document management questions, disclosure of the use of AI may not be necessary. However, where AI-generated content can substantially affect the reasoning and the arbitral tribunal's understanding of the case, transparency becomes essential, and disclosure

[35] CIArb Guideline (n 22).
[36] *Mata v Avianca Inc*, No 22-cv-1461 (PKC) (SDNY 2023).
[37] ibid para 27.
[38] *John LaPaglia v. Valve Corporation* (US S.D.C. 2025).
[39] Rania Alnaber, 'An "A-eye" to the future of arbitration: a new world or a better world?' (2025) *International Journal of Law and Information Technology* 1, 11, 16.
[40] CIArb Guideline (n 22) art 2.6.
[41] ibid.

might be considered a necessary measure for the prevention of a violation of a due process principle. Otherwise, reliance on non-transparent AI tools may complicate the arbitral tribunal's obligation to provide a reasoned award, which is a key aspect of due process in many arbitration frameworks.

Accordingly, transparency is necessary where the use of AI may affect the parties' procedural rights and the arbitral tribunal's reasoning. The due process question appears when the use of AI is sufficiently connected to the outcome of the arbitral proceedings, and it requires a disclosure.

3.4. INDEPENDENCE AND THE INTEGRITY OF THE ARBITRAL DECISION-MAKING

Finally, the use of AI by arbitrators themselves raises fundamental concerns regarding the independence and integrity of arbitral decision-making. Arbitrators are appointed based on their expertise, judgment, and ability to independently assess the facts and the law. The increasing use of AI tools in analysing evidence and drafting awards raises the question of whether arbitrators may, in practice, be delegating aspects of their adjudicatory function to algorithmic systems. The integration of AI into arbitral decision-making requires careful safeguards to ensure that human oversight[42] is maintained and that responsibility for the decision remains with the arbitrators for the maintenance of 'fairness, empathy, and the ability to consider special circumstances that cannot be captured by algorithms'.[43]

This risk is widely recognised in institutional guidance where there are explicit provisions on the prohibition of delegation of the mandate.[44] AI may be used to improve efficiency, organise information/materials, support research or assist with drafting. However, the arbitrator must personally review and assess parties' submissions, evaluate the evidence, apply the law and formulate the reasoning of the award. Human oversight is a due process requirement because it preserves the personal mandate and accountability of the arbitral tribunal.

Altogether, these risks demonstrate that AI is not merely a neutral technological improvement but a development with the potential to transform the procedural aspects of arbitration in ways that directly engage due process guarantees. Issues such as technological asymmetry, unreliable outputs, lack of transparency, and potential encroachment on arbitral independence underline the need for thoughtful regulation of AI use in arbitration. In particular, the importance of developing safeguards that ensure AI remains a tool that supports, rather than replaces arbitrators and undermines the fundamental guarantee of due process in arbitral proceedings.

The due process analysis should be risk-based. It should consider who used the AI tool, for what purpose, with what data, and with what possible effect on the proceedings or the award. Where the risk arises, AI must be controlled by appropriate safeguards. The following chapter examines the emerging institutional response and the extent to which current soft law instruments seek to preserve due process in AI-assisted arbitration.

IV. INSTITUTIONAL SAFEGUARDS ON THE USE OF ARTIFICIAL INTELLIGENCE IN INTERNATIONAL COMMERCIAL ARBITRATION

The due process risks arising from the use of AI in international commercial arbitration have led to a growing institutional response to regulate its use ethically. Since 2024, several arbitral in-

[42] Fernando Messias, *The Practice of Law and International Arbitration in the Age of Artificial Intelligence* (Springer 2025) 28.

[43] Mohammad Ali Solhchi, Faraz Baghbanno, 'Artificial Intelligence and its Role in the Development of the Future of Arbitration' (2023) 2(2) IJLCW 58, 69.

[44] ibid.

stitutions and professional bodies[45] have issued guidelines addressing the use of AI in arbitral proceedings, aiming to ensure that it is used as a supportive tool and does not undermine the main principles of procedural fairness.

Altogether, the following instruments constitute the first soft law responses to the increasing use of AI in arbitration, i.e. (1) AAA-ICDR Standards for AI in ADR which provide a broad framework for responsible AI use by ADR administrators, neutrals and advocates, addressing ethical and human-centred values, privacy and security; (2) SVAMC Guidelines on the use of AI in arbitration provide a principle based framework applicable to all participants in arbitration, with separate provisions for parties, party representatives and arbitrators; (3) SCC Guide to the use of AI in cases administered under the SCC rules takes a more flexible approach and expressly states that it provides guidance without imposing specific obligations; (4) CIArb Guideline on the use of AI in arbitration is more detailed and addresses the benefits and risks of AI, general recommendations, arbitrators' powers to regulate AI use by the parties, and the use of AI by arbitrators themselves; (5) VIAC Note on the use of AI in arbitration proceedings is intended to facilitate discussion of AI use in VIAC arbitration proceedings; (6) AOASA Guidelines on the use of AI in arbitrations and adjudications which are aimed at assisting parties and tribunals in adjudication and *ad hoc* arbitration, and address permissible uses of AI, core principles, risks and practical guidance for tribunals, including disclosure, confidentiality, hearings and awards; (7) CIETAC Guidelines on the use of AI technology in arbitration which consider issues such as party autonomy and the auxiliary role of AI; (8) WIPO Note on the use of AI in WIPO ADR proceedings which focuses on responsible AI use through principles of accuracy, accountability, non-delegation of personal responsibility, confidentiality and transparency.

Despite their shared objective, these instruments differ in scope and degree of regulatory intervention. Some guides, particularly those issued by SVAMC and CIArb, adopt a more structured and principle-based approach, addressing issues such as disclosure, competence in the use of AI tools, confidentiality, integrity of evidence, non-delegation of decision-making and the preservation of due process. By contrast, SCC and VIAC instruments adopt a more flexible approach, encouraging tribunals and parties to address the use of AI where appropriate, particularly through case management and procedural orders. This difference is important since it shows that there is not yet a single harmonised standard governing the use of AI in international commercial arbitration, the existing guidelines increasingly point towards several common safeguards.

Across these instruments, three principal safeguards may be identified as particularly relevant to the protection of due process in AI-assisted arbitration, i.e. (1) the preservation of arbitral independence of decision-making; (2) transparency and disclosure of AI use; and (3) verification of AI-generated outputs.

4.1. PRESERVATION OF INDEPENDENT ARBITRAL DECISION-MAKING

The first and fundamental safeguard concerns the independence of arbitral decision-making. A consistent principle across the existing instruments is that AI may assist the arbitral process, but it must not replace the adjudicatory function of the tribunal. This safeguard reflects the personal nature of the arbitrator's mandate. Arbitrators are appointed because of their expertise, independence, impartiality and judgment abilities. The parties do not agree to

[45] These include AI guidelines issued by (1) the American Arbitration Association and the International Centre for Dispute Resolution (AAA-ICDR); (2) the Silicon Valley Arbitration and Mediation Center (SVAMC); (3) the SCC Arbitration Institute (SCC); (4) the Chartered Institute of Arbitrators (CIArb); (5) the Vienna International Arbitration Centre (VIAC); (6) Association of Arbitrators of Southern Africa (AOASA); and (7) the China International Economic and Trade Arbitration Commission (CIETAC); (8) World Intellectual Property Organisation (WIPO).

have their dispute decided by an AI algorithmic system, even if such a tool is used to assist the arbitral tribunal.

The SVAMC Guidelines emphasise that arbitral decision-making is a non-delegable function.[46] It means that AI tools cannot substitute the arbitrator's personal and independent evaluation of the facts, law and evidence.[47] The SCC Guide provides the same prohibition on delegation of the decision-making function, however, it recognises the possibility of the support of this process.[48] The VIAC Note adopts the same approach, stating 'arbitrators retain full control over the decision-making process',[49] which 'might have an impact on the proceedings and shall not delegate any such decision to an AI tool'.[50] It is notable that the VIAC does not eliminate the situation where AI can assist arbitrators with certain tasks and even provide insights. The CIArb also provides a direct prohibition on the delegation of any decision-making responsibilities to the AI tools.[51] It goes a step further than other guides and directly points out that this prohibition is related to the limitation of the risk of due process violations.[52] However, it recognises the possibility of using AI tools to facilitate the more accurate and efficient review of materials submitted in the arbitral proceedings.[53] WIPO similarly provides that 'human judgement and decision-making remain central to the resolution of the dispute'.[54] It also clarifies that AI tools shall not be used as 'a substitute for independent exercise of one's professional obligations'.[55]

These soft law instruments draw a clear distinction between permissible use of AI as an assisting tool and the impermissible substitution of the tribunal's adjudicatory function. Their common normative ground is that the arbitrator's decision-making mandate must be non-delegable. At the same time, these instruments generally recognise that AI may be used for other purposes, for instance, for the organisation and review of submitted information and materials, improving the efficiency of drafting and case management. However, the main decision-making functions, i.e. the assessment of facts, interpretation of the applicable law, evaluation of evidence, application of law to the facts, and formulating the reasons for the awards, must remain the responsibility of the arbitral tribunal.

This safeguard protects the parties' legitimate interests and expectations that their dispute will be determined by the arbitrators appointed for their expertise, independence, impartiality and judgement rather than by an AI system operating through an undisclosed or insufficiently transparent algorithmic process. Accordingly, the preservation of independent arbitral decision-making is a due process guarantee which preserves personal mandate, accountability and legitimacy of the tribunal.

The principle of non-delegation confirms that the dispute must be solved by the arbitral tribunal, not by an AI tool. However, this safeguard is effective only with a particular degree of transparency, i.e. if AI is used in a manner which influences the arbitral tribunal's decision, the parties must have an opportunity to know of such use. Otherwise, the prohibition on delegation would remain formal since the parties would not have a practical possibility of assessing whether AI has affected the procedure

[46] SVAMC Guidelines on the Use of Artificial Intelligence in Arbitration 2024, Guideline 6.
[47] ibid.
[48] SCC Guide (n 17).
[49] VIAC Note (n 49) art 2.1.
[50] ibid.
[51] CIArb Guideline (n 22) art 10.2.4.
[52] ibid, Article 2.5.
[53] ibid, Article 8.2.
[54] WIPO Note (n 54) art 1.
[55] ibid.

or the basis of the award itself. For this reason, the preservation of independent arbitral decision-making must be taken into account with the rules on transparency and disclosure.

4.2. TRANSPARENCY AND DISCLOSURE OF AI USE

The second safeguard concerns transparency and disclosure of the usage of AI tools. The existing instruments do not impose a universal obligation to disclose every type of use of AI. This approach is logical since AI nowadays is embedded in many ordinary tools used for writing, grammar checking, translations, legal research, document management, etc. Requiring disclosure of every minor use of AI would be impractical, sometimes even impossible and could interfere with the work process and legal strategy.

Instead, the instruments generally adopt a risk-based and case-specific approach. The SVAMC Guidelines expressly state that disclosure of AI is not necessary as a general matter.[56] It underlines that it should be made on a case-by-case basis, considering all relevant circumstances, in particular, due process.[57] The SCC Guide underscores the importance of integrity, where transparency and accountability[58] are considered to be the main components. Arbitrators are advised to disclose the use of AI in the following circumstances: (1) research of facts and the law and (2) application of the law to the facts.[59] SCC considers that such a disclosure will ensure the parties' right to be heard[60] and, accordingly, will ensure that the arbitral tribunal will not exceed its mandate and that due process will not be violated. The CIArb also recognises that disclosure may be necessary 'to preserve the integrity of the arbitration and/or the validity and enforceability of the award'[61] and provides that disclosure may be required where the use of an AI tool may affect the evidence, the outcome of the arbitral proceedings, or involve the delegation of a duty owed to the arbitral tribunal or another party.[62] The VIAC Note similarly encourages tribunals, where relevant, to discuss the possible use of AI at the case management conference.[63] It also provides that arbitrators, at their discretion, can inform parties regarding the usage of AI and, similarly, as SVAMC,[64] propose what exactly can possibly be disclosed to the parties[65] and how it can be documented, i.e. in procedural order No 1.[66] WIPO takes a similar approach to VIAC and encourages arbitrators to discuss with parties at the proceedings stage the use of AI tools.[67]

The current approach regarding the disclosure of the use of AI is mostly unified, i.e., none of the existing instruments oblige parties or arbitrators to disclose the fact of the use of AI. Rather, disclosure becomes relevant where AI use may have an impact on the arbitral proceedings, in particular, where it may affect legal reasoning and the arbitral tribunal's understanding of the case. The existing regulation invites arbitrators and parties to assess the limits of AI use where such use may affect due process and, if needed, to disclose this information under the agreed terms. Properly applied, disclosure strengthens the accountability and legitimacy of the arbitral proceedings, while still respecting party autonomy and confidentiality.

[56] SVAMC Guidelines (n 46) Guideline 3.
[57] ibid.
[58] SCC Guide (n 17).
[59] ibid.
[60] ibid.
[61] CIArb Guideline (n 22) art 7.2.5.
[62] ibid, Article 7.1.
[63] VIAC Note (n 49) art 5.1.
[64] SVAMC Guidelines (n 46) Guideline 3.
[65] VIAC Note (n 49) art 5.3.
[66] ibid.
[67] WIPO Note (n 54) art 5(1).

However, this safeguard also reveals one of the main limitations of the current regulatory framework. Since disclosure is generally assessed on a case-by-case basis, it all depends on the arbitral tribunal's discretion and the parties' willingness to raise AI-related concerns at an early stage of the proceedings. Even though this flexibility can be considered useful due to the wide variety of AI tools possible to use, it may also result in inconsistent practice across different arbitrations. The effectiveness of transparency as a due process safeguard depends not only on the existence of soft law guidance but also on its practical implementation through the case management meetings and discussions, parties' possibilities to express their opinion and procedural orders rendered by the arbitral tribunals.

4.3. VERIFICATION OF AI-GENERATED OUTPUTS

The third safeguard concerns the reliability and verification of AI-generated outputs. It responds to one of the most serious risks associated with AI, particularly generative AI, i.e. the production of inaccurate, incomplete, biased or fabricated information, including so-called 'hallucinations'. In arbitration, such errors may affect legal research, factual summaries, evidentiary analysis, translations, draft reasoning, etc.

The SVAMC Guidelines in respect for due process state that parties must review the outcome of an AI tool for verification reasons,[68] and an arbitrator should not presume that sources exist where an AI tool is unable to provide independently verified citations.[69] The SCC Guide takes the same approach and underlines that the arbitral tribunal should ensure effective human oversight, i.e. to apply an appropriate level of review and verification.[70] The CIArb Guidelines also set a prohibition for the arbitrators to blindly rely on AI-generated output, i.e. arbitrators shall not only independently verify the relevant sources but also check the accuracy of the AI-generated outputs.[71] Meanwhile, the VIAC Note provides a brief provision regarding the responsibility of both arbitrators and parties regarding the outputs of AI tools.[72] Even though it does not explicitly require arbitrators to review and verify the outputs, it underlines the responsibility regarding the usage of such AI-generated outputs. WIPO follows the examples of SVAMC, SCC and CIArb, and underlines the importance of a critical review and assessment of AI-generated output.[73]

This safeguard is essential because AI-generated text may appear persuasive even when it is completely inaccurate. The review and verification of AI-generated content help preserve the integrity of arbitral proceedings and ensure the quality and reliability of the decision-making process. Such a safeguard appropriately balances the use of AI to enhance efficiency in arbitration and the need to mitigate the risk that parties' submissions, and consequently, the award rendered by the arbitral tribunal, may be influenced by inaccurate data, fabricated authorities, or biased analysis. The recommendations contained in the relevant soft-law instruments are crucial for all participants of arbitral proceedings, as they help prevent potential violations of due process which may lead to the unenforceability of the award.

Overall, the existing institutional safeguards demonstrate a clear attempt to align AI use with the core elements of arbitral due process. Non-delegation protects the independence and personal responsibility of the arbitral tribunal. Disclosure protects the right to be heard. Review and verification protect the reliability of

[68] SVAMC Guidelines (n 46) Guideline 4(2).
[69] ibid, Guideline 7(2).
[70] SCC Guide (n 17).
[71] CIArb Guideline (n 22) art 10.2.3.
[72] VIAC Note (n 49) art 4.2.
[73] WIPO Note (n 54) art 2(3).

evidence, submissions and reasoning. However, these instruments remain primarily soft law. Their effectiveness depends on party agreement, arbitral tribunal discretion, institutional practice and the willingness of participants to use AI ethically and responsibly. They provide an important starting point, however, not a complete regulatory framework. The remaining question, addressed in the following chapter, is whether these safeguards are sufficient to protect due process in practice, especially given the rapid development of AI systems and the absence of a harmonised international standard.

V. ASSESSMENT OF SUFFICIENCY OF CURRENT SAFEGUARDS

Although institutional AI guidelines represent an important development in addressing the due process risks in arbitration, their effectiveness remains limited. The existing instruments identify the main procedural concerns, however, they do not amount to a complete or harmonised regulatory framework. Their sufficiency should be assessed by reference to their legal status, consistency, practical enforceability and capacity to respond to the rapid development of AI technologies.

5.1. THE SOFT LAW NATURE OF EXISTING INSTRUMENTS

The first limitation is the non-binding nature of existing instruments. Most of the existing guidelines operate as soft law rather than binding legal rules, i.e. their application depends largely on the discretion of arbitral tribunals and the agreement of the parties.

Soft law has traditionally played a significant role in international arbitration since it allows flexibility and respects party autonomy. However, it may also lead to inconsistent approaches. Unless the relevant guidance is incorporated into the arbitration agreement, institutional rules or a procedural order, its application depends mainly on the cooperation of the parties and the discretion of the arbitral tribunal. As a result, the protection of due process may vary from one arbitration to another, even where similar AI-related risks arise.

5.2. FRAGMENTED AND UNEVEN PROTECTION

The second limitation is the fragmented and uneven nature of the existing guidance. Some instruments (e.g., adopted by SVAMC and CIArb) provide relatively detailed frameworks addressing key issues such as arbitrator independence, disclosure of AI use, and verification of AI-generated outputs. By contrast, other instruments (e.g. adopted by SCC and VIAC) adopt a more general and facilitative approach, primarily encouraging discussion between the tribunal and the parties or broader ADR-related standards (e.g. AAA-ICDR and WIPO).

This diversity shows that a common direction is emerging, but not yet a common standard. The instruments generally agree on the need for human oversight, verification and non-delegation. However, they differ on crucial questions, such as when AI use must be disclosed and what information should be disclosed, how AI-generated text should be assessed and what consequences follow from non-compliance. These differences limit the predictability of AI-related due process safeguards in international arbitration.

5.3. RAPID EVOLUTION OF AI

The third limitation is the challenge of the rapid evolution of AI. As AI tools become more sophisticated and more deeply integrated into legal practice, the risks identified in this article, such as a lack of transparency, unreliable outputs, and potential violations of arbitral independence, are likely to evolve as well. This means that even well-drafted guidance may become incomplete as new AI tools and risks emerge. For example, future systems may become more capable of conducting legal analysis, generating legal reasoning and preparing draft awards. At the same time, risks such as hallucinations, algorithmic bias and lack of explainability may become more complex. Existing safeguards based on disclosure, verification and human oversight

will remain necessary, but they may not always be sufficient, especially where participants of the arbitral tribunal lack the technical knowledge required to assess its reliability and may struggle to keep pace with these technological developments. This raises concerns regarding their long-term effectiveness as instruments for safeguarding due process.

Overall, the sufficiency of current safeguards depends largely on their practical implementation, i.e. they are most effective when incorporated into procedural orders, party agreements or arbitral tribunal discretions at an early stage of the arbitral proceedings. Until a more harmonised standard develops, arbitral tribunals will remain central in ensuring that AI is used in a manner consistent with the right to be heard, equality of arms, procedural integrity and independent arbitral decision-making.

As a result, one possible way forward is the development of more harmonised and widely accepted standards on the use of AI in international commercial arbitration. A framework comparable to the IBA Guidelines on the use of generative AI in mediation could serve as a common reference point for the creation of a similar legal instrument for the use of AI in arbitration. The aim would not be to prohibit the use of AI, but to provide clearer guidance on disclosure, verification, decision-making, non-delegation, and the distinction between routine/technical AI assistance and high-risk AI use capable of affecting due process.

CONCLUSIONS

The use of AI in international commercial arbitration should not be assessed through an opposition between prohibition and acceptance. The more appropriate approach is the functional one, i.e. the legal significance of AI depends on the role it performs in a particular proceeding and on whether that role may affect the parties' procedural position, the evidentiary record, the arbitral tribunal's reasoning or the award itself. AI may be compatible with due process in so far as it remains a supportive tool, i.e. one that assists rather than displaces human judgement and can be subject to human control, verification and transparency as to the AI tools deployed, the tasks they performed and the extent of their influence on the proceedings or the award.

The soft law instruments developed to date represent the arbitral community's initial response to these functional concerns. They are an important first attempt to adapt arbitral procedure to this rapid technological development. However, their non-binding nature, uneven scope and dependence on the parties' agreement and/or the arbitral tribunal's discretion mean that they cannot yet provide a complete safeguard against AI-related due process risks. A more harmonised and risk-based framework is needed, which will not restrict innovation but will ensure that efficiency does not come at the expense of the right to be heard, equality of arms, independent arbitral decision-making and the legitimacy and enforceability of arbitral awards.