

Artificial Intelligence in the realm of International Arbitration



Barrister Zafar Iqbal Kalanauri

Advocate Supreme Court of Pakistan, Arbitrator, Mediator

Executive Summary:

This article delves into the growing role of Artificial Intelligence (AI) within the realm of international arbitration, offering an in-depth exploration of key topics that are shaping the future of dispute resolution. It begins by defining AI in the context of arbitration, clarifying its potential applications in automating and enhancing various stages of the arbitration process.

The article also examines the likelihood of AI becoming more widespread, particularly as global arbitration bodies and legal practitioners increasingly turn to AI-driven tools for case analysis, decision-making support, and procedural efficiency. In doing so, the discussion highlights the benefits AI brings, such as improved speed, cost savings, and enhanced accuracy in evaluating complex legal data.

However, the use of AI in international arbitration also presents risks and challenges. Issues like bias in AI algorithms, lack of transparency, and concerns about accountability are discussed, emphasizing the need for robust ethical and regulatory frameworks.

Finally, the article addresses the inherent limitations of AI in arbitration, noting that while AI can aid in streamlining processes, it cannot replace human judgment or the nuanced decision-making required in the resolution of complex legal disputes.

Introduction:

In this article, we will explore and cover the following topics:

- What is meant by AI in the context of arbitration?
- Is AI likely to become more widespread in the future?
- What benefits does AI offer in international arbitration?
- What risks and challenges arise from using AI?
- What are the limitations of AI in the context of international arbitration?"

Let's start with some definitions.

1. What do we mean by international arbitration.

International arbitration is a private dispute resolution method where a third party, called an arbitrator, makes a legally binding decision (an award) on the dispute between the parties. It can be compared to private sector litigation. The "international" aspect arises when the parties involved come from different legal systems or jurisdictions, or when the arbitration takes place under a legal framework different from that which would normally apply to the parties.

2. An example of when international arbitration is typically used.

International arbitration generally comes from a contractual agreement where the parties have decided to resolve disputes through arbitration rather than taking the matter to court.

3. Shifting from IA (international arbitration) to AI (artificial intelligence), how is AI defined in this context.

There have been many definitions of AI over time, evolving alongside technological advancements. In 1950, the Turing test suggested that a machine displays human intelligence if it can hold a conversation indistinguishable from that with a human. Five years later, John McCarthy coined the term "artificial intelligence," describing it as creating machines that behave intelligently. Today, AI refers to systems capable of performing tasks associated with human cognition, such as understanding natural language, recognizing patterns, and generating human-like outputs. If we can't tell whether the output is from a human or a machine, we've reached the point AI is at today, marking its progression since the Turing test.

4. How might AI be applied in international arbitration.

With the power of AI, including generative AI and large language models (LLMs), it can be trained on massive datasets to learn language patterns. In arbitration, AI could be used for searching large volumes of documents for key terms, organizing information, and even generating reports or summaries based on input parameters. However, risks like data errors and "hallucinations"-instances where AI produces false information-exist.

5. Some specific ways AI might be used in the arbitration process.

AI is already being employed in various ways. For instance, speech recognition technology allows AI to transcribe hearings in real time, complete with speaker identification. AI could also assist in interpreting or translating languages during proceedings or translating documents. Additionally, AI is a powerful tool for legal research, capable of analyzing vast amounts of data quickly. AI might even help in selecting arbitrators, using data to identify the most suitable candidate.

AI can also be leveraged in document review, searching for key phrases, names, or dates among large datasets. In the document disclosure process, which is often expensive and time-consuming, AI could expedite the search for relevant documents, reducing costs. Predictive coding and computer-assisted review are other areas where AI could assist, helping organize

materials, draft pleadings, or produce initial drafts of witness statements. Many people have encountered tools like ChatGPT, and it's likely only a matter of time before such technology is widely used in arbitration, especially for legal drafting.

Although AI can accelerate document analysis and reduce costs, it still requires human oversight to ensure accuracy. In the future, AI will likely be used more frequently in international arbitration, assisting in tasks but still under human supervision.

6. Now, let's discuss regulation. What regulations are in place for AI in international arbitration.

Regulation in this area is limited, with regulators trying to catch up. There are protocols like the Seoul Protocol on Video Conferencing in International Arbitration and the ACAS 2020 Cybersecurity Protocol for International Arbitration. In the UK, the Information Commissioner's Office (ICO) launched a consultation on generative AI earlier this year. The EU passed the Artificial Intelligence Act, though it won't take effect until 2026. Guidance has also been issued by legal bodies, such as the Bar Council in the UK, advising lawyers to carefully review AI-generated outputs and ensure data privacy is maintained.

7. Why is regulation necessary.

Transparency and fairness in decision-making are crucial. Tribunals need to ensure that AI-generated submissions are accurate, while clients are concerned with privacy and confidentiality. Moreover, parties must consider not only the law of the seat of arbitration but also the rules in countries where they might seek to enforce the award.

Let's now discuss the benefits, risks, and challenges of using AI in international arbitration.

8. Starting with the positives, what are the main advantages of AI.

The most significant benefit of AI is cost savings, especially in reducing the legal input required in arbitration cases. AI can also increase efficiency, enabling faster resolution of disputes. According to Richard Susskind, AI's greatest contribution will likely be in empowering non-lawyers to handle their own legal matters. However, in the near term, AI will most likely enhance lawyers' work rather than replace them.

9. The risks and challenges of AI usage in international arbitration.

One risk is the potential for data breaches, particularly when confidential client information is involved. Additionally, AI systems can produce false information, or "hallucinations," as seen in cases where U.S. lawyers cited fictitious cases generated by AI. The courts have censured these lawyers not for using AI, but for failing to verify the information.

There's also the risk of over-reliance on AI, which could lead to legal mistakes. AI might raise ethical concerns, such as bias in decision-making. Although some claim AI is less biased than humans, it is still a concern.

10. The limitations of AI in international arbitration, and could AI replace human arbitrators.

While AI can assist arbitrators, replacing human arbitrators is a different question. Though algorithms can resolve simpler disputes (e.g., eBay resolves most disputes this way), complex international arbitration cases are less likely to be decided by AI. Humans excel in emotional intelligence and nuanced decision-making, which are critical in arbitration. There's also the "black box" problem, where the decision-making process of AI is not entirely understood.

Additionally, the New York Convention 1958, the framework for enforcing arbitral awards, doesn't explicitly state that arbitrators must be human. However, some jurisdictions may require arbitrators to have legal training and other qualities only humans possess. There could also be issues regarding the enforceability of AI-generated awards.

Final thoughts: What does the future hold for AI in international arbitration.

Overall, the future looks positive for AI's role in international arbitration, especially from a client perspective, as it can reduce costs and expedite the process. AI is evolving, and while there may be challenges, such as data hallucination and the "black box" issue, the potential benefits outweigh these concerns. AI will continue to play an increasing role in arbitration, transforming the field in unpredictable ways.

While AI can streamline processes and increase productivity, important questions remain: Can we trust a machine to deliver justice? Can AI overcome its limitations in terms of emotional intelligence and nuanced decision-making? These are the key topics we will be discussing in the years ahead.