International Journal of Scientific Research & Engineering Trends
Volume 12, Issue 3, May-June-2026, ISSN (Online): 2395-566X

Artificial Intelligence as a Silent Arbitrator: Regulating AI-Assisted Decision-Making in International Commercial Arbitration

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Abstract- — The integration of artificial intelligence into international commercial arbitration is an indicator of a paradigm shift that disrupts the traditional pillars of the adjudicative process. This research paper examines how AI has evolved from a non-dominant administrative tool to a so-called silent arbitrator that takes control of the substantive substance of the arbitral mandate. The introduction of automation into global commerce means that institutions, such as the International Chamber of Commerce (ICC), the Singapore International Arbitration Centre (SIAC), and the Hong Kong International Arbitration Centre (HKIAC), face the challenge of efficiency and procedural due process. A thorough examination of the 2025 International Arbitration Survey shows that there is an increase in the utilisation of AI in fact-finding and document review, and that standpoints on applying AI to the execution of judgment and discretion remain strong. This paper analyses the regulatory response, including the European Union Artificial Intelligence Act and the proliferation of light regulations issued by the Silicon Valley Arbitration and Mediation Centre (SVAMC) and the Chartered Institute of Arbitrators (CIArb). In addition, the research considers the jurisprudential consequences of AI-aided awards observed in recent cases, including LaPaglia v. Valve Corp. It suggests guidelines to a strong regulatory system that ensures human control and maintains party independence.

Keywords- Artificial Intelligence, Arbitration, Due Process, Enforceability, Human Oversight,

I. INTRODUCTION

The Technological Disruption of the Arbitral Mandate

The current state of international commercial arbitration is undergoing radical change, marked by the active adoption of generative artificial intelligence (AI) and large language models (LLMs).1 The arbitration community has traditionally been cautious about embracing technology, focusing on confidentiality and the human aspect of adjudication. However, the Fourth Industrial Revolution has accelerated the evolution of machine-based systems to the point where they can carry out tasks that were formerly the preserve of legally trained experts.2 The concept of the silent arbitrator refers to the understated yet pervasive impact of AI technologies that facilitate, or in some cases even replace, human reasoning.3

The move towards technological integration is mainly driven by the efficiency gap observed in international arbitration. According to Queen Mary University of London (QMUL) and White & Case International Arbitration Survey (2025), inefficiency has remained a thorn in the flesh due to the adversarial nature of counsel, over-lawyering, and failure to manage the case proactively. The respondents in the 2025 survey believe that use will grow tremendously over the next five years, as it can potentially save them a lot of time and costs. The current implementation of AI across the whole lifecycle of a dispute includes the selection of arbitrators and the classification of evidence using predictive coding, as well as the drafting of non-substantive parts of arbitral awards.

Although these are the advantages, the black-box type of modern AI (where we do not know the logical basis of the input-to-output mapping) casts serious doubt on the responsibility to offer a reasoned award, as well as on the maintenance of procedural fairness. The lack of transparency in most AI systems undermines the principles of transparency and accountability that underpin the arbitration process.4

Enthusiasm around AI is checked, as mentioned in the 2025 survey, by the fear of algorithmic bias, the risk of loss of confidentiality, and the possibility of what is referred to as ‘hallucinations,’ where AI produces convincing yet completely false information. The research paper aims to map the current regulatory environment and to propose mechanisms for regulating AI in an age where it is increasingly difficult to distinguish between human and machine decision-making.5

II. REVIEW OF LITERATURE

1. Magdalena Łągiewska, Artificial Intelligence and International Arbitration Law: Revolution or Evolution

(Wolters Kluwer 2025).6- Łągiewska describes the integration of AI as either an evolutionary upgrade or a revolutionary transformation of arbitral justice. Łągiewska holds that AI should be a support system and should not substitute the primary adjudicative role. In her opinion, the individual mandate of the arbitrator, which is based on the consent of the parties, cannot be delegated to algorithmic systems, as this would affect the legitimacy and enforceability of the award.

2. Giesela Rühl, Artificial Intelligence and Arbitration: The EU Artificial Intelligence Act and Its Impact on International Arbitration, 39 J. Int l Arb. 441 (2022).7- Rühl analyses the EU Artificial Intelligence Act and highlights its classification of AI systems used in dispute resolution as "high-risk." She warns that its extraterritorial application may burden arbitral institutions and arbitrators, potentially discouraging innovation. While soft-law instruments such as SVAMC and CIArb guidelines promote flexibility, their non-binding nature creates fragmented global standards.

3. Agnieszka Łągiewska, Artificial Intelligence in Arbitration: Challenges to the Arbitral Mandate, 37 J. Int'l Arb. 3Int l(2020).8- Łągiewska argues that AI's growing role in arbitration risks transforming decision-support tools into de facto decision-makers, thereby threatening the arbitrator's personal mandate. She emphasises that the institution's legitimacy depends on human judgment, independence, and accountability. While AI may assist reasoning, delegating evaluative or discretionary functions undermines due process and party consent, making strict human oversight indispensable.

Research Objective

- To examine what constitutes the concept of the "silent arbitrator" and how artificial intelligence is reshaping the arbitral decision-making process.
- To assess whether AI-assisted decision-making poses challenges to the enforceability and legal validity of arbitral awards under the New York Convention and UNCITRAL Model Law.
- To evaluate whether current hard-law and soft-law regulatory mechanisms provide an adequate governance framework for the responsible use of artificial intelligence in international commercial arbitration.

Research Question

- What is the nature and extent of artificial intelligence's role as a "silent arbitrator" in influencing decision-making within international commercial arbitration?
- Whether the use of AI-assisted decision-making tools by arbitral tribunals affect the legal validity, enforceability, and legitimacy of arbitral awards under international arbitration law?
- Whether existing regulatory frameworks and soft-law guidelines sufficient to prevent the impermissible delegation of the arbitral mandate to artificial intelligence while safeguarding due process and party autonomy?

III. RESEARCH METHODOLOGY

This study follows a doctrinal and analytical research methodology. It relies on qualitative analysis of primary sources, such as international conventions, statutes, model laws, and judicial decisions, as well as secondary sources, including books, journal articles, institutional guidelines, and arbitration surveys. Comparative and critical approaches are diligent in assessing regulatory frameworks governing AI-assisted decision-making in international commercial arbitration.

Conceptualising the Silent Arbitrator: Evolution and Taxonomy

The development of artificial intelligence (AI) in the legal field could be divided into three different periods: the era of electronic archiving, the epoch of Big Data, and the modern age of generative intelligence. In the first phase, technology was limited to search engines and databases like LexisNexis, and its use mainly led to the digitalisation of existing information. The era of Big Data, 2000-2020, saw the rise of machine learning (ML) systems that learned from large datasets rather than relying on manually encoded rules as earlier systems did. We are currently living in the era of generative AI, where big language models (LLMs) like ChatGPT, as well as legal-specific AI like Harvey, can generate new text, infer complex semantic patterns, and forecast judgments.9

Taxonomy of AI Applications in International Arbitration

This taxonomy of AI applications in international arbitration identifies four major categories based on their functional utility and secondary effects. High efficiency gains are associated with administrative and procedural tools, such as automated scheduling and transcription, that entail low levels of due-process risk. Mechanisms of evidence, such as predictive coding

(TAR), are necessary to handle information stored electronically, but they require human supervision. Case forecasting and arbitrator profiling tools are considered strategic and analytical tools that inform party strategy but raise questions about algorithmic bias. Lastly, adjudicative assistance systems such as LLMs used to write and research pose a significant risk of delegation and might lead to a so-

called silent arbitrator effect. The risk of the so-called affirmational authority bias, which is described as a human arbitrator relying too much on the output of AI without independent verification, is inherently summarised into the designation of a silent arbitrator. This release of the so-called personal mandate is one of the main aspects of disagreement in the modern academic discourse.10 In her 2025 book monograph, Artificial Intelligence and International Arbitration Law: Revolution or Evolution, Magdalena Łągiewska argues that the implementation of AI should respect the principles of arbitration to maintain the process as an evolution, not a revolution, which could question its validity. Similarly, the handbook on judicial control of arbitral awards emphasises that the duty of independence and impartiality is an orientation principle, not a strict rule; thus, a human-centred approach to decision-making is needed, even as technological tools become increasingly sophisticated.11

Recent Updates: 2025 Institutional Rules and Survey Data

The 2025 International Arbitration Survey is also the latest indicator of how the industry feels about AI. The results show significant changes in the competitive environment of arbitral institutions. Both rules of HKIAC and SIAC were cited as quite favourable on a global level, reflecting an increasing faith in the Asia-Pacific heartland that is taking up technocratic leadership. The Survey 2025 also found that respondents from Asian-Pacific locations were almost twice as confident as their European peers in AI's ability to speed up the arbitration process.12 2025 Survey - Drivers and Obstacles to AI Use in Arbitration

Data from the 2025 QMUL and White & Case International Arbitration Survey identifies the primary drivers and obstacles to AI adoption. The leading drivers are time savings for parties and counsel (54%), cost reduction (44%), and the potential to reduce human error (39%) and enhance consistency (35%). Conversely, the most significant obstacles are fears of errors and hallucinations (51%), followed by confidentiality and security risks (47%). Other barriers include a lack of experience or skills among practitioners (44%) and the current gaps in the regulatory framework (38%).

The recent institutional changes show a wise shift towards embracing technology. The most recent HKIAC Administered Arbitration Rules, which will take effect on 1 June 2024, are expected to give arbitrators the necessary ability to counter procedural abuse and delay, thereby facilitating an indirect, conducive environment for AI-enhanced case management. The concerned SIAC Rules 202513 suggested simplified claim processing in the US of a little less than 1 million, in which the usefulness of AI in document-only cases is likely to play a critical role. Although large entities such as the ICC and LCIA have been formally silent on AI and its application in their foundational rules, they encourage the use of electronic solutions by issuing related reports, such as the ICC Commission Report on the Management of E-Document Production.14

Legislative Frameworks: The EU AI Act and UNCITRAL Initiatives

The regulation of AI has moved from abstract ethical principles to mandatory hard law. The most consequential of these is the EU Artificial Intelligence Act (Regulation (EU) 2024/1689), which entered into force in August 2024. This Act disrupts the long-standing mutual indifference between EU law and commercial arbitration. Under the Act, AI systems used for the administration of justice and democratic processes are classified as high risk when they are intended to assist a judicial authority or an Alternative Dispute Resolution body in researching and interpreting facts and the law.15

EU AI Act - Obligations for the Arbitration Community

The EU Artificial Intelligence Act specifies clear compliance requirements and penalties regarding unique members of the arbitration environment. Professionals who supply data, i.e., Providers, are required to establish a full risk-management regime and have strict data-quality governance rules. Failure to do so in such cases can lead to disciplinary actions up to 35 million and 7 per cent of worldwide turnover. In the same manner, arbitral institutions acting as either Deployers or Providers must maintain records for at least 6 months and provide the parties with the required transparency. Infractions can be fined up to 15 million or 3 per cent of turnover. There are individual arbitrators, called Deployers, who are responsible for checking for output bias, justifying the conclusions made by AI, and making them known to the parties; failure to do so may lead to disciplinary measures, nullification of awards, or personal liability.16

The discussion highlights a conspicuous aspect of the Act: the “requalification risk” set out in Article 25. When such an individual arbitrator uses a general-purpose AI tool, e.g., ChatGPT, to perform a high-risk task, such as applying law to specific facts, the arbitrator can be a

provider of a high-risk system. Such a reclassification has additional, stricter technical and regulatory burdens on the arbitrator. Of special importance here is the extraterritoriality of the statute: a court sitting in New York may be unaware that the EU AI Act applies to it if the AI output is used to enforce an award against a party located in the European Union.17

In line with the EU's risk-based paradigm, the UNCITRAL has highlighted the validity of automated actions. As stipulated by the UNCITRAL Model Law on Automated Contracting (MLAC), which came into effect in July 2024, a contract (including an arbitration agreement) cannot be declared to be invalid by the mere fact that one of the actions was performed with the help of an automated system that lacks a human element. However, the MLAC avoids the term' decision by design, thereby highlighting that the administrative decision-making process, like notifications or schedules, can be legitimately automated. Still, the substantive adjudicative decision of a tribunal cannot be to maintain legal attribution.18
Soft Law Governance: SVAMC and CIArb Guidelines

In the absence of harmonised global legislation, soft law has become the primary steering mechanism for practitioners. Two major guidelines were released in 2024 and 2025: the SVAMC Guidelines on the Use of AI in Arbitration and the CIArb Guideline on the Use of AI in Arbitration.19

Comparative Analysis of SVAMC (2024) and CIArb (2025) Guidelines

A comparative evaluation of SWAMC 2024 and the CIArb 2025 guidelines reveals different approaches to soft-law governance. The SVAMC guidelines are largely principle-based, with a focus on the human-in-the-loop paradigm and a case-by-case disclosure regime in substantive use. In turn, the CIArb guidelines emphasise risk management and explicitly ignore the ability to delegate the arbitral mandate, thereby requiring continuous disclosure and mandating independent verification of all AI-generated content. Although the SVAMC proposal provides a model provision for procedural orders, the CIArb framework offers a stronger toolkit, including model AI agreements and two distinct procedural orders. It adopts an inclusive OECD-conformist definition of AI systems. The CIArb guidelines are quite an innovation in their application of the principle of equality of arms. They acknowledge that AI can empower less well-endowed parties to present their cases more effectively, but warn that arbitrators should be instructed by relevant law, such as privacy and cybersecurity laws, when determining the admissibility of AI-derived evidence. The two sets of guidelines reiterate that an arbitrator

should not outsource any part of their personal mandate to an AI tool, especially in assessing facts, law, and evidence.

Technical Mechanisms: Predictive Coding and Document Production

The most developed application of AI in arbitration is predictive coding, also known as technology-assisted review (TAR). This managed machine-learning algorithm enables stakeholders to safeguard the dissemination of electronically stored information (ESI) by training it to identify relevant documents.20

The mechanism generally has some steps that are agreed and documented by parties in a protocol-Seed Set Generation: A senior lawyer who is well-versed with the case goes through a statistical sample, which is the so-called Reference Set and puts documents into the responsive and/or non-responsive category. Iterative Training: The program learns from patterns in human coding and generates additional batches for examination. The senior lawyer continues correcting the AI's errors until the algorithm reaches a statistically acceptable level of precision. Auditing and QC: The trained algorithm is applied to the entire document corpus. A random selection of documents marked as non-responses is reviewed by humans to ensure they did not miss any important evidence.

Despite the high efficiency scores, other legal thinkers like Remus (2023) are cautious about this move, as it might amount to replacing the unproductive discretion of lawyers with the mechanised objectivity that promotes full document production, thus disrupting the adversarial balance. In Brown v. BCA Trading Ltd,21 the English High Court supported the application of predictive coding. However, in an international arbitration setting, this practice is still mainly motivated by the contractual agreement rather than by an institution.

Case Law and Procedural Challenges: The Road to Vacatur

Due to AI's encroachment into the quiet arbiter sphere, the number of appeals of arbitral awards has increased. The case of LaPaglia v. Valve Corp (April 2025)22 provides a prime example. The claimant petitioned the FAA to overturn an arbitration award, claiming that the arbitrator had delegated his ruling to AI. The counsel for the claimant used an AI detector, which implied that the award's phrasing was clumsy, unnecessary, and unrelated, a synonym for machine-generated output. The claimant argued that this was contrary to the parties' expectation that a human arbitrator would render a well-reasoned decision. On the same note, in the administrative sphere, courts in Canada have been facing obstacles to rulings made by Chinook, an artificial intelligence application used to process visa applications. In Espinoza Cotacahi, the court refused a challenge that an adjudicator used AI on the ground that speculation and conjecture, saying that the application of AI by an adjudicator does not, in itself, amount to a loss of procedural fairness unless it is shown, by clear evidence, that the human did not exercise independent judgment.

High-Profile AI Hallucination Incidents and Consequences
High-profile cases of AI-generated hallucinations in recent years have led to severe legal consequences across various jurisdictions. This reliance on five fictitious authorities by a barrister in England and Wales led to a wasted costs order and a referral to disciplinary action.23 In the US, one law firm was fined $5,500 and ordered to complete mandatory ethics education after submitting a brief containing fabricated quotations and non-existent authority. In Canada, the court concluded that a lawyer, who submitted fabricated cases in a memorandum, had breached the duty, and the lawyer received a public reprimand. Such accidents highlight the hallucination risk posed by large language models. By the end of 2025, over 350 cases will have been recorded worldwide in which lawyers or adjudicators have used AI-generated citations that do not exist in the real world. The CIArb guidelines address this by making it clear that a participant's responsibility and accountability do not disappear, even when an AI tool is used.24

Findings
An integrated analysis of survey data, scholarly literature, and jurisprudence makes a number of salient findings regarding the role of artificial intelligence as a "silent arbitrator."

The "Efficiency-Integrity" Tension: This is an inherent tension between the need to resolve a case in a timely fashion and the ethical obligation to observe audi alteram partem-the right of a party to be heard. Although artificial intelligence is able to process data in a matter of weeks, much faster than a human, it lacks the critical reasoning and empathic abilities that are needed to analyze emotional dynamics and determine the credibility of witnesses.

Shift from Reputation to Data Analytics: Arbitrator selection is moving away from "closed market networks" toward AI-driven profiling. While this improves transparency, it risks "algorithmic opacity," in which an arbitrator's profile is oversimplified by data they cannot control or verify.

Extraterritorial Regulatory Overlap: The selection of arbiters is shifting in favour of AI-based profiling, no longer relying on closed market networks. Though this makes transparency more transparent, it also poses the danger of so-called algorithmic opacity, in which data beyond their control or verification is used to simplify an arbitrator's profile.

The Reasoning Standard: Probably, a black box AI output falls short of the requirement of giving a reasoned award under the UNCITRAL Model Law. To enforce an award, an arbitrator should be capable of the reasoning process, which is not possible with the existing learning models.

Confidentiality as the Primary Deterrent: Forty per cent of the users cite the issue of confidentiality as a primary deterrent. The application of open-source AI technologies, including ChatGPT, is becoming an ethical red line, with major professionals suggesting that closed systems should be used only for client-sensitive information.

Suggestions
Based on the analysis of the 2025 landscape, the following suggestions are offered to maintain the integrity of international commercial arbitration:

- For Arbitral Institutions: Incorporate AI Protocols into standard procedural orders. Institutions should provide a safe list of "vetted" AI tools that meet security standards to assist parties and tribunals.
- For Arbitrators: Adopt a policy of Reasoned Human Verification. When using AI for drafting or research, arbitrators should document their verification steps. A failure to verify "hallucinated" facts should be considered a breach of the personal mandate.
- For Parties and Counsel: Negotiate an AI Agreement during the first Case Management Conference. This agreement should specify which tasks (e.g., research, document summaries) are permissible for AI and which require strictly human input.
- For Legislators: The EU Commission should consider a targeted carve-out for commercial arbitration under the AI Act to preserve party autonomy and prevent the flight of arbitration to less-regulated jurisdictions.
- For Experts: Develop AI Detection and Auditing Services. As deep fakes and automated evidence become more common, the role of the technical expert will shift from analysing data to verifying its authenticity.

IV. CONCLUSION

The emergence of AI as a silent arbitrator is an inevitable reality that offers revolutionary possibilities for the efficacy of international commercial arbitration. The predictive coding and LLM-aided drafting tools are already helping tribunals save on costs and handle large volumes of data. However, this technological revolution should not be at the cost of the so-called moral reference point of adjudication: human judgment, empathy and responsibility. The new regulations of 2024 and 2025, including the EU AI Act, incorporated into the CI Arb Guidelines, create a clear guideline: AI should not take over the arbitrator's mandate, but rather serve as an assistant to it. The

necessity of the existence of reasoned awards in the New York Convention, as well as the UNCITRAL Model Law, is one of the essential preventive measures of the black box decision-making. In the end, the validity of arbitration relies on the parties' belief that an unbiased human mind is resolving their conflict with insight into something beyond a mathematical formula. A framework of transparency, compulsory vindication, and informed consent will enable the arbitration community to embrace the power of artificial intelligence and, at the same time, keep the so-called silent arbitrator silent on behalf of a tribunal that has relinquished its mandate.

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