International Arbitrators as a Profession

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This article argues that international arbitrators now satisfy the sociological criteria of an established profession. This conclusion is not based on the classical, state-licensed definition of a profession but on more modern defections that identify professions as including transnational, networked community that consolidates authority through specialized expertise, reputational gatekeeping, and peer-policed ethics. Building on contemporary theories of transnational professionalization, this article argues that a shared arbitrator identity, formalized training pathways (e.g., CIArb, institutional academies, specialized LLMs), and soft-law self-governance (IBA Guidelines, institutional challenge decisions) collectively replicate the core functions of professional self-regulation. The article engages João Ilhão Moreira's contrary view, reframing decentralization, hybrid roles, and the absence of licensing as key features of emergent global professions. It then traces how arbitrators' jurisdiction and public recognition have expanded, and assesses pressure points—ISDS reform, CAS/EU judicial oversight, and corruption cases such as P&ID v. Nigeria—where professional responsibility must be exercised to sustain legitimacy. The conclusion calls for arbitrators to lean into their professional status by embracing transparent procedures, ethical commitments, and a more coordinated public voice to shape the future of global dispute resolution.

1. Introduction

Do international arbitrators constitute a *profession*? Or are they merely a loosely affiliated group of elite lawyers who are occasionally appointed to serve in a different capacity? This Article reexamines these longstanding questions in light of both recent developments in international arbitration and evolving sociological theories of professionalization in transnational contexts.[1]

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[1] For other sources that addressed related questions outside the formal context of sociological criteria, see Jan Paulsson, *Ethics, Elitism, Eligibility*, 14 J. INT'L ARB. 13 (1997) (critiquing elite control over international arbitration and whether it meets "professional"

Earlier scholarship on this topic, dating to the 1990s, primarily relied on traditional Weberian models of professions that emphasized state-sanctioned licensing regimes in national jurisdictions and centralized institutional authority to define what constitutes a profession.[2] Under these frameworks, international arbitrators' lack of formal credentials and their part-time practice were generally deemed to fall short of the criteria for professional status.

I myself took up the question of whether international arbitrators constituted a profession in a 2005 article. There I argued that international arbitrators did not yet qualify as a true profession, but they had 'begun to display a 'professional impulse."[3] This impulse meant they demonstrated an emerging tendency "to present themselves as a profession," but did not fully satisfy all the formal criteria.[4]

Over the past two decades, however, the field of international arbitration has undergone significant structural, institutional, and normative transformations. Arbitrators now increasingly operate within a framework of peer-policed ethical norms, formalized training programs, and reputational gatekeeping that collectively resemble or functionally replicate the features of established professions.

At the same time, sociological theories of the professions have also expanded to account for transnational contexts. In particular, work by James Faulconbridge, Daniel Muzio, and others has articulated how global professions emerge and consolidate authority through decentralized networks, epistemic legitimacy, and soft law governance, rather than through traditional state-based mechanisms.[5]

Against this backdrop, this Article makes two central claims, one theoretical and one empirical. Theoretically, it situates international arbitrators within the sociology of professions, showing that they have developed the hallmarks of a transnational professional community—shared identity, jurisdictional

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standards); Thomas Schultz & Cédric Dupont, *The Market for Laws in International Arbitration and the Self-Regulation of Arbitrators*, 25 Eur. J. Int'l L. 997 (2014) (discussing self-regulation and entry barriers in arbitration, relevant to professionalization)

[2] *See* RICHARD L. ABEL, AMERICAN LAWYERS (1989) (offering a sociological analysis of legal professions, cited extensively in discussions of international arbitration as a quasi-profession).

[3] C.A. Rogers, 'The Vocation of the International Arbitrator' (2005) 20 *Am. University International Law Rev*., 957.

[4] *See id.*

[5] *See infra* Section __.

boundary-work, formal training, and ethical self-regulation. Empirically, it demonstrates that this professionalisation an be observed—and measured, albeit imperfectly—through publicly available evidence, including data drawn from LinkedIn profiles, institutional disclosures, and anecdotal case studies of professional practice.

In developing these arguments, my analysis both builds upon and diverges from João Ilhão Moreira's important 2022 contribution,[6] in which he argues that international arbitrators do not constitute a profession. While acknowledging the empirical validity of his observations, this Article contends that the absence of formal licensing and full-time exclusivity, features that Moreira treats as disqualifying, can instead be understood as hallmarks of emergent transnational professions. In this view, international arbitrators exemplify how professional authority is reconstituted in the context of global legal pluralism and the declining monopoly of the nation-state over expert labor.

The Article proceeds as follows. Part II revisits prior sociological and doctrinal evaluations of whether international arbitrators constitute a profession. Part III presents and elaborates modern theories of transnational professionalization, particularly those of Faulconbridge and Muzio, and synthesizes these with insights from others who have studied both transnational and national professions. Part IV applies this transnational framework to the case of international arbitrators, examining how linguistic self-identification, expanding jurisdiction, formal training pathways, ethical self-regulation, and reputational hierarchies have coalesced into the architecture of a profession. Finally, Part V explores how arbitrators' professional status imposes responsibilities, particularly in response to institutional pressure points such as ISDS reform, the CAS/ECHR tensions, and corruption-related legitimacy concerns. Finally, in closing it calls for arbitrators to use their authority to proactively shape the future of global dispute resolution.

II. Prior Evaluations of International Arbitrators' Professional Status

Despite many scholarly works taking up questions regarding international arbitrators' professional status, to date no one has affirmatively concluded that

[6] João Ilhão Moreira, 'Arbitration vis-à-vis Other Professions: A Sociology of Professions Account of International Commercial Arbitrators' (2022) 49 *Journal of Law and Society* 48

they should formally be recognized as a profession. This Article is the first to reach the opposite conclusion.

One of the most influential early sociological studies of international arbitrators was by Yves Dezalay and Bryant Garth in the 1990s. In their now-classic *Dealing in Virtue* (1996),[7] they documented how arbitration developed from a relatively informal network of European legal elites into a transnational field governed by social capital and reputational currency. They compellingly described this evolution as a transition from a "club" to an incipient professional community. While they stopped short of declaring arbitration a profession, their emphasis on internal norms, elite reproduction, and symbolic capital closely mirrors Andrew Abbott's (1988) depiction of professions as contesting and consolidating jurisdiction over expert labor.

Dezalay and Garth's analysis provided valuable insight into early patterns of appointment, observing that arbitration was initially a "very personal activity, with only a few people considering it a full-time profession." In those formative years, arbitrators often "lucked" into appointments due to happenstance or insider connections, then parlayed those experiences into repeat roles. Entry to the field was largely opaque, dependent on who you knew rather than on formal qualifications.

Arbitrators developed credibility through accumulated appointments and specialized procedural know-how. While there were shared expectations and tacit norms, these amounted more to intuitions and informal understandings than to the structured ethical codes and training regimes typically associated with established professions. This "club" functioned with a degree of exclusivity but lacked transparency or an articulated sense of public responsibility.[8] Instead of formal training or credentialling, arbitral appointments depending on relationships. Instead of ethical standards, this club had largely internalized norms that were personally, not systemically or formally, enforced. This regime fell short of a true profession as it lacked with exclusive jurisdiction, publicly recognized expertise, and collective mechanisms for self-regulation and accountability.

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[7] YVES DEZALAY AND BRYANT G. GARTH, DEALING IN VIRTUE: INTERNATIONAL COMMERCIAL ARBITRATION AND THE CONSTRUCTION OF A TRANSNATIONAL LEGAL ORDER 34 (1996).1

[8] In the early days, Dezalay and Garth noted that arbitrators regarded themselves [as having a duty.] This sense of duty is more accurately understood as a form for noblesse oblige, rather than the kind of ethical obligations associated with professionalization.

When I took up this question in 2005, I concluded that while international arbitrators exhibited what I termed a "professional impulse," they had not yet crossed the threshold into full professional status.[9] Instead of applying any particular theory of professions, I instead examined how 'international arbitrators demonstrate some of the markers of professionalization and have consciously invoked the nomenclature of professionalism.'[10]

In particular, I observed that appointment criteria were highly informal, based largely on reputation, prior experience, and elite networks. There was no central registry, certification, or consistent training pathway. I also emphasized the absence of effective consequences for arbitrator misconduct. While arbitrators enjoyed immunity from civil liability—a protection shared with judges and certain other public officials—there were few, if any, professional sanctions. Disqualification or removal were rare and opaque, and reputational consequences remained largely unspoken.[11]

In 2014, Emmanuel Gaillard—himself a renowned arbitrator—observed that "being an arbitrator has become a social-professional category of its own". [12] His contribution is important because it was among the first to identify that the role of international arbitrator was more than an occasional activity for full-time practitioners. [13]While Gaillard uses the term "profession" and the work is titled *The Sociology of International Arbitration*, he uses those terms in an intuitive sense, rather than a more technical sense that invokes sociological literature's technical frameworks.[14]

My 2014 book, *Ethics in International Arbitration*, extended analysis from my 2005 article though not expressly through the lens of professionalization. There, I critiqued narrow conceptualizations of arbitrators as mere *service providers*, meaning technicians whose only obligations were to resolve the dispute consistent with the specifics of the parties' contractual agreement. I argued that

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[9] Catherine A Rogers, *The Vocation of the International Arbitrator* (2005) 20(4) *American University International Law Review* 957, 1001–04.

[10] Ibid at 976-77.

[11] Ibid.

[12] Emmanuel Gaillard, 'Sociology of International Arbitration' (2015) 31 *Arbitration International* 1, 4.

[13] Gaillard noted that "until recently, the function of arbitrating was viewed as occasional by nature. This is no longer the case." Ibid.

[14] As Magali Larson has noted, "[t]he word 'profession' has become a vague honorific, and 'professionalization' an elastic concept used to describe almost any move toward higher status, whether inside or outside the world of work." Magali Sarfatti Larson, *The Rise of Professionalism* (University of California Press 1977) 15.

they were instead better understood as *justice providers* in light of their institutional protections and quasi-public powers. As examples to support this view, I noted that, unique among professions, international arbitrators enjoy immunity from civil liability. I also noted that they had developed theories, now accepted in international arbitration law, that permitted (required?) them to apply mandatory rules of law other than the law agreed to by the parties. These features, I reasoned, signaled that arbitrators were not just private contractors, but actors entrusted with delivering a form of justice.

More recently, João Ilhão Moreira revisited this question. After surveying sociological criteria, he concludes that international arbitrators still do not qualify as a profession. His argument rests mainly on the absence of state-imposed entry barriers, the part-time nature of many arbitrators' engagements, and the field's client-driven orientation. He also stresses the lack of centralized ethical regulation and the persistent diversity of national legal cultures within which arbitrators operate.

Moreira's analysis is both thoughtful and grounded. He acknowledges new frameworks for evaluating the emergence of transnational professions, even though he relies primarily on more formalist conceptions of professionalization applicable to national professions. Below, I build on theories that suggest the features that Moreira treats as disqualifying—decentralization, hybrid roles, and lack of formal licensing—should be reinterpreted as characteristic of a newer mode of global professionalism. Nevertheless, his analysis raises important challenges to international arbitrators' future as a profession, which I take up in the final Part of this Article. The next Part provides an overview of the literature, particularly how transnational theories of professions break new ground, but also incorporate key aspects of neo-Weberian theories.

III. Theories of Transnational Profesisonalization

This Article takes as its starting point theoretical frameworks developed for understanding how professionalization operates in an era of globalization, particularly those developed by James Faulconbridge and Daniel Muzio.[15] They argue that traditional neo-Weberian accounts of professions that focus exclusively on national institutions, licensing regimes, and state-profession

[15] *See* Faulconbridge, J. R., & Muzio, D. (2012). Professions in a globalizing world: Towards a transnational sociology of the professions. *International Sociology*, *27*(1), 136-152; Faulconbridge, James and Muzio, Daniel, Re-Inserting the Professional in the Study of PSFs (July 3, 2008). Global Networks, Vol. 7, No. 3, pp. 249-270, 2008, (or 2007?)

compacts are inadequate in evaluating how professions operating in transnational settings emerge, evolve, and consolidate.[16]

Instead of being determined solely by national licensing regimes or state-sanctioned monopolies, Faulconbridge and Muzio introduce the concept of "transnational professional projects," emphasizing how global professional service firms, supra-national regulatory bodies, and transnational associations are reshaping both who qualifies as a professional and how they practice. Their framework reorients sociological inquiry away from the nation-state as the central unit and towards an understanding of how overlapping layers of authority involve institutions, firms, and states interacting at local, national, and transnational levels. Professional identities, ethical norms, and jurisdictional boundaries are produced through what they describe as a "messy dialogue" between these overlapping regimes, giving rise to a distinctively transnational sociology of the professions.[17]

Crucially, this transnational framework builds on and extends core neo-Weberian insights, particularly Andrew Abbott's theory of jurisdictions as the primary units of professional power. For Abbott, professions compete to control, what he calls "jurisdictions." According to Abbott, professions assert their authority over exclusive domains of work over which they claim epistemic authority, technical competence, and ethical responsibility.[18]

Similarly, the work of Magali Larson on professional closure through credentialing and symbolic control complements this transnational turn. In Larson's terms, professional projects aim to secure monopoly not only through market control, but also by producing cultural authority, meaning the authority to determine who counts as competent and who may speak with legitimate expertise.[19] Faulconbridge and Muzio incorporate this logic by emphasizing how professional closure in global fields now depends on new forms of transnational credentialing, such as cross-border recognition agreements, in-

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[16] *See id.* p. __

[17] James R Faulconbridge and Daniel Muzio, 'The Rescaling of the Professions: Towards a Transnational Sociology of the Professions' (2012) 27(1) *International Sociology* 109, 22.

[18] Andrew Abbott, *The System of Professions: An Essay on the Division of Expert Labor* (University of Chicago Press 1988).

[19] Magali Sarfatti Larson, *The Rise of Professionalism: A Sociological Analysis* (University of California Press 1977).

house training academies, or firm-specific ethical codes.[20] Their study of global legal education further shows how professional firms create internal training regimes that function as de facto credentialing systems, designed to socialize practitioners into firm-specific cultures of global professionalism.[21]

Similarly, Eliot Freidson's idea of professionalism as a "third logic," meaning a phenomenon that is distinct from market and bureaucracy, also maps directly onto the transnational framework.[22] Freidson emphasized that professions derive their authority from peer-based evaluation, control over the definition of competence, and normative commitments to the public good.[23] Faulconbridge and Muzio recognize these same traits but locate them in new institutional configurations. For instance, professional firms themselves now function as "regulatory actors," which inculcate ethical codes and behavioral norms through global training programs and internal disciplinary mechanisms.[24] Under this view, professional autonomy is preserved but no longer tethered to national associations or state-delegated authority.

Other scholars have similarly redefined criteria that apply to professionalization at the international and transnational level. For example, Djelic and Quack emphasize the role of "transnational communities of practice" and "soft law frameworks" in regulating behavior across borders.[25] These communities serve as conduits for the creation, dissemination, and internalization of normative expectations across borders.[26]

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[20] Faulconbridge and Muzio (2012)19, 21.

[21] James R Faulconbridge and Daniel Muzio, 'Legal Education, Globalization, and Cultures of Professional Practice' (2009) 21 *Georgetown Journal of Legal Ethics* 1335.

[22] Eliot Freidson, *Professional Powers: A Study of the Institutionalization of Formal Knowledge* pp.17-25 (University of Chicago Press 1986) (describes professionalization as a "collective mobility project" and discusses jurisdictional strategies, entry barriers, and control over competence)

[23] Eliot Freidson, *Professionalism: The Third Logic* (University of Chicago Press 2001). [10]

[24] Faulconbridge and Muzio (2012) 16.

[25] [25] Marie-Laure Djelic and Sigrid Quack, 'Transnational Communities and Governance' in Marie-Laure Djelic and Sigrid Quack (eds), *Transnational Communities: Shaping Global Economic Governance* (Cambridge University Press 2010) 3, 9.

[26] ibid 9–13 (discussing the normative authority of transnational associations and their role in shaping professional standards and practices). The synergies among actors is not entirely unique to transnational professions. For example, "the emergence of hospitals [in England] provided doctors with an identity-forming organizational base, and that this was one important advantage medicine had in its road to professional recognition[.]" Magali Sarfatti Larson, «Professions today: self-criticism and reflections for the future », *Sociologia, Problemas e Práticas* [Online], 88 | 2018, para 18. osto online no dia 22 maio 2019, consultado o 12 agosto 2025. URL: http://journals.openedition.org/spp/4907

The emphasize that "transnational professional associations are key actors in the diffusion of rules, the construction of norms, and the embedding of transnational order," particularly in fields like law, accounting, and engineering.[27] These associations contribute to global governance not through coercive enforcement, but through consensus-building, epistemic authority, and the institutionalization of best practices, which over time acquire quasi-regulatory force.[28] In doing so, they reshape the landscape of professional authority, enabling new forms of self-regulation that are both more agile and more dependent on legitimacy generated through their own networks, cultivated reputation, and ability to generate expert consensus.

In a similar vein, Halliday and Shaffer similarly note that professions operating in global governance spaces often act as "norm entrepreneurs," crafting and promoting rules that states are unable or unwilling to supply.[29] They agree that these professionals work not through formal state delegation, but through "mobilization of legal norms by transnational actors, such as professional networks, institutions, and epistemic communities, that travel across and influence multiple jurisdictions."[30] Their work underscores that legitimacy in such transnational legal orders derives not from traditional sovereign authority but from performance, credibility, and procedural fairness.[3]

This vision aligns closely with Faulconbridge and Muzio's framework of transnational professional projects. Both emphasize that professions are increasingly embedded in hybrid governance regimes where power is distributed across networks of public and private actors, rather than centralized within national states. Just as Faulconbridge and Muzio argue that professional authority is now "generated in a messy dialogue between national and supra-national actors,"[4] Halliday and Shaffer conceptualize transnational legal orders as "co-constructed across multiple sites," with professionals playing a key role in the "horizontal diffusion and vertical institutionalization" of norms.[5] Their work situates professionalization within a broader framework of global legal

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[27] Marie-Laure Djelic and Sigrid Quack, 'Transnational Communities and Governance' in Marie-Laure Djelic and Sigrid Quack (eds), *Transnational Communities: Shaping Global Economic Governance* (Cambridge University Press 2010) 3, 9.

[28] Marie-Laure Djelic and Sigrid Quack, 'Theoretical Building Blocks for a Research Agenda Linking Globalization and Institutions' in Marie-Laure Djelic and Sigrid Quack (eds), *Globalization and Institutions: Redefining the Rules of the Economic Game* (Edward Elgar 2003) 15–20.

[29] Terence C Halliday and Gregory Shaffer, *Transnational Legal Orders* (Cambridge University Press 2015) 15.

[30] Ibid. at 6.

pluralism and hybrid authority, where legitimacy stems from performance, credibility, and procedural fairness rather than formal jurisdiction.[31]

Faulconbridge and Muzio adopt this model but show how, in transnational contexts, jurisdictional boundaries are increasingly negotiated not just with the state, but with a wider cast of actors including GPSFs, transnational standard-setters, and global clients.[32]

Similarly, the work of Magali Larson on professional closure through credentialing and symbolic control complements this transnational turn.[33] In Larson's terms, professional projects aim to secure monopoly not only through market control, but also by producing cultural authority by defining who counts as competent and who may speak with legitimate expertise.[5] Faulconbridge and Muzio incorporate the logic of Larson's insights by emphasizing how professional closure in global fields now depends on new forms of transnational credentialing, such as cross-border recognition agreements, in-house training academies, or firm-specific ethical codes, all of which replace state-controlled licenses.[6]

Finally, Mike Saks' contributions are essential to locating professions within broader governance regimes.[34] He stresses that professional power cannot be understood without reference to its political and institutional embeddedness.[10] Faulconbridge and Muzio echo this point in their analysis of how transnational professions derive legitimacy not from abstract claims to expertise alone, but from their ability to secure credibility and market access, rather than an expression of traditional state-delegated autonomy.[35]

As explored in greater detail below, international arbitrators exemplify the core features of a transnational profession as understood and defined by these scholars. Arbitrators do not possess formal state licenses or enjoy monopoly access to a closed market. Instead, their authority emerges from "a peculiar mix of the principles of several national systems, or principles set down by supra-national actors."[36] In this way, international arbitrators are consistent with what

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[31] ibid 35–38.

[32] Faulconbridge and Muzio (2012) 17–19.

[33] Magali S Larson, *The Rise of Professionalism: A Sociological Analysis* pp.15-18 (University of California Press 1977) .

[34] Mike Saks, 'Defining a Profession: The Role of Knowledge and Expertise' (2012) 27(1) International Sociology 87.

[35] Faulconbridge and Muzio (2012) 21–23.

[36] Ibid. at 21.

transnational professionalism looks like in the twenty-first century: a decentralized, networked, and reputationally policed community, operating at the intersection of law, commerce, and transnational governance. Meanwhile, as taken up in the final part, their status as professionals has important implications for how they manage the challenges facing international arbitration in this era of re-nationalization, reorganization of the global trade order, and increasing skepticism about institutions and law itself.

IV. Applying the Theoretical Frameworks to International Arbitrators

This Part applies the theoretical described above to examine in detail features and trends of modern international arbitration practice to demonstrate the professionalization international arbitrators.

A. Shared Professional Identity

A crucial feature of the professionalization process is the formation of a shared identity and the discursive assertion of professional status. Professions consolidate their legitimacy not only through external recognition but also through how they describe themselves in their language, symbolism, and narratives of expertise. The linguistic shift in the definition of *arbitrator* marks a significant transition toward professional self-identification and symbolic boundary-setting.

Historically, the term *arbitrator* described a person appointed to preside over a specific dispute. The authority conferred upon them was limited in time and scope, and outside the confines of a particular case, they would typically revert to their primary professional identity as a lawyer, academic, engineer, or businessperson.

Today, however, the term *arbitrator* increasingly denotes a standalone professional identity. Individuals routinely identify themselves as international arbitrators on business cards, websites, directories, and professional CVs even when they are not currently serving on a tribunal. Professional ratings agencies and services, such as Lexology, the Global Arbitration Review (GAR), and Chambers, now identify and rank not only lawyers and law firms, but also arbitrators.[37]

[37] Cites There is a certain irony to arbitrator prizes, such as "The Most Prepared Arbitrator" by GAR, because the confidential nature of international arbitration precludes objective or systematic measurement.

This shift has been driven by institutional actors, market practices, and professional networks, not formal state licensing. Arbitral institutions, for example, maintain rosters of individuals identified as arbitrators, often regardless of whether they currently serve on cases. Publications and conference programs routinely group individuals under the professional title of "arbitrator," and training programs—such as those offered by the CIArb, the ICC, and specialized LLMs—explicitly prepare participants for a career as an arbitrator, not merely for arbitration-related practice.

Institutions like Arbitra International and Arbitration Chambers are transnational organizations founded to serve the needs and promote the work of full-time arbitrators. Online platforms such as LinkedIn feature profiles in which *arbitrator* is presented as a primary role, often distinct from and coequal with other legal or academic engagements.

This linguistic and symbolic transformation reflects a broader sociological process of professional self-fashioning. These trends are consistent with Evetts' observations that professions engage in discursive strategies to claim distinctiveness, expertise, and moral authority. In this sense, the redefinition of *arbitrator* also mirrors similar historical developments in law and medicine. The term *lawyer* once referred to someone who simply performed legal tasks, but over time came to signify a regulated professional identity with exclusive jurisdiction, ethical obligations, and a role in the public interest.[38] Similarly, *doctor* evolved from a functional label to a designation carrying institutional authority, state endorsement, and cultural legitimacy.[39]

This shift is not merely semantic. It marks the consolidation of an epistemic community with shared knowledge, normative commitments, and reputational hierarchies. By presenting themselves as *arbitrators*, individuals signal that they have a collective identity as members of group of a highly specialized adjudicators. This move demonstrates a kind of cohesion that is critical to a professional group's ability to claim and defend jurisdiction over specialized knowledge and services.

This development also provides a response to Moreira's critique that international arbitrators are part-time and remain anchored in other professional occupations. This shift demonstrates a continuous identity, which is not tied to

[38] Larson, *The Rise of Professionalism: A Sociological Analysis* (University of California Press 1977) 15–17.

[39] Ibid 25-27.

full-time work. Many professionals—especially in transnational or post-bureaucratic contexts—hold multiple roles or practice flexibly while maintaining a coherent professional identity.[40]

In sum, the modern usage of the term *arbitrator* reflects an internal reorientation within the field. Arbitrators are no longer defined solely by discrete appointments but by a collective sense of role, expertise, and responsibility. This evolution aligns with the symbolic and sociological dimensions of professionalization and supports the view that international arbitration is increasingly structured as a transnational profession.

B. Expanding Jurisdiction

As examined above, Abbott uses the term *jurisdiction* to describe how professions develop by capturing and defending control by claiming with special expertise and ethical integrity.[41] Although he uses the term *jurisdiction* as a metaphor, international arbitrators compete for and claim control over literal jurisdictional powers, both with respect to the reach of their substantive jurisdiction and their procedural authority.

With respect to international arbitrators' substantive decisionmaking jurisdiction, the evolution of their power to rule on issues of corruption and criminal conduct provides a useful illustration. Historically, issues of corruption were considered "non-arbitrable," meaning beyond international arbitrators' jurisdictional reach.[42] If a case implicated questions of corruption, such as a contract procured through bribery, those issues had to be decided by a court of competent jurisdiction. Only then could an arbitrator preside over the remaining issues in the case, if any.

Today, by contrast, arbitrators not only have recognized power to rule on questions of corruption, but they are increasingly regarded as having ethical obligations to investigate proactively situations that present heightened risks or even an implied likelihood of corruption.[43] In a remarkable expansion of arbitral

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[40] J. Faulconbridge, D. Muzio, 'Global Professional Service Firms and the Challenge of Institutional Complexity: 'Field Relocation' as a Response Strategy' (2016) 53:1, *Journal of Management Studies* 89.

[41] Abbott 1988, 20).

[42] See generally Inan Uluc, *Corruption in International Arbitration* (Wildy 2018) 84-86

[43] Alexis Mourre, 'Arbitration and Criminal Law: Reflections on the Duties of the Arbitrator' (2006) Arbitration Intl 95–118; Domitille Baizeau and Tessa Hayes, 'The Arbitral Tribunal's Duty and Power to Address Corruption Sua Sponte', in Andrea Menaker (ed),

authority, tribunals have in some instances ordered the suspension of domestic criminal proceedings initiated by state parties where those proceedings threatened to interfere with the arbitral process. Such orders are extraordinary not only because they amount to injunctive relief directed against a sovereign state, but because they reach into the domain of criminal justice, an area traditionally viewed as the exclusive province of state power.[44]

In other cases, tribunals have referred suspected criminal conduct to prosecutorial authorities, effectively acting as conduits between private international adjudication and public enforcement mechanisms.[45] These powers underscore how the authority to address corruption has become a site of jurisdictional expansion for arbitrators and a means of reinforcing their professional claim over the normative order of transnational dispute resolution.[46]

Similar to expansion of their substantive jurisdiction, arbitrators have also expanded their procedural powers to include today the power to bind non-signatories to arbitration agreements, and to order joinder, intervention, consolidation, and participation of amici.[47] The increased participation of third-party funders has also meant international arbitrators make rulings that affect these non-parties, as well as develop policies relating to their participation.[48]

International arbitrators have expanded their power to issue various forms of relief, including more effective interim measures and emergency relief. These expansions demonstrate an express contest with national courts for control over

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International Arbitration and the Rule of Law: Contribution and Conformity, ICCA Congress Series, vol 19 (Kluwer 2017).

[44] T. Obersteiner, 'Provisional Measures Under ICSID Rules: The Power of Tribunals to Interfere with Domestic Criminal Proceedings' (2020) 37 Journal of International Arbitration 607.

[45] Emmanuel Gaillard, 'The Emergence of Transnational Responses to Corruption in International Arbitration' (2019) 35(1) Arb Int'l 1, 12–14.

[46] *See* Cecilia AS Nasarre, 'International Commercial Arbitration and Corruption: The Role and Duties of the Arbitrator' (2013) Transnational Dispute Management 1, 15; Mourre (n 40) 101. H

[47] SI Strong, 'Intervention and Joinder as of Right in International Arbitration: An Infringement of Individual Contract Rights or A Proper Equitable Measure?' (1998) Vanderbilt J of Transnational Law 915;

[48] For example, arbitral tribunals have developed tests for whether and when a responding party can obtain security for costs when a claimant is funded. ICCA, Queen Mary University of London 'Report of the ICCA-Queen Mary Task Force on Third-Party Funding in International Arbitration' (2018) 4 ICCA Reports < https://www.arbitration-icca.org/icca-reports-no-4-icca-queen-mary-task-force-report-third-party-funding>

the narrow issue of interim relief as well as institutional innovation to facilitate that contest.[49]

Perhaps one of the most instructive examples of arbitrators expanding jurisdictional powers is with respect to regulating the conduct of counsel, particularly with respect to arbitral powers to disqualify counsel. Historically, arbitrators were understood as not having power to disqualify counsel in the event of a conflict of interest. Today, several individual arbitral awards, soft law sources, institutional rules national court cases have acknowledged that arbitrators have the power to disqualify and otherwise regulate counsel.[50] This power is not universally recognized or understood. Indeed, there are internal contests about the nature and extent of this role for international arbitrators.[51] Despite these ongoing debates, the progress toward general acceptance is unmistakable.

Each of these expansions of power followed a similar process. Arbitrators ruled in individual cases, which were subsequently the basis for industry debate and then codification through soft law sources or through incorporation into arbitral institutional rules or ratification through legal reforms (in particular the UNCITRAL Model Law) or by national courts. The process is not always linear, and many other actors other than arbitrators facilitate these developments. But international arbitrators are unequivocally the catalysts and intellectual leaders that facilitate these changes.

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[49] Historically, parties had trouble enforcing tribunal-granted interim relief, which made direct resort to courts more appealing. Revisions in ___??? included extensive revisions to ensure such orders were more enforceable in courts and establishing limited judicial powers to issue interim relief in support of international arbitration. Cite Tribunal-granted interim relief was still problematic, however, because parties had to wait until the tribunal was constituted. In response, international arbitration developed innovative procedures for emergency arbitrators, making initial resort to national courts less necessary or appealing. E. Collins, 'Pre-Tribunal Emergency Relief in International Commercial Arbitration' (2012) 10 Loyola University Chicago International Law Rev. 105.

[50] *See Hrvatska Elektroprivreda d. d. [HEP] v The Republic of Slovenia,* ICSID Case No. ARB/05/24, Tribunal's Ruling Regarding the Participation of David Mildon QC in Further Stages of the Proceedings, 23 May 2008, Guidelines 26 and 27 of the IBA Guidelines on Party Representation in International Arbitration address possible remedies a tribunal may grant in the event of representative misconduct. IBA Guidelines on Party Representation in International Arbitration (2013)(quote language re disqualification) , London Court of International Arbitration (LCIA) Rules Annex, para 7 ('the Arbitral Tribunal may decide whether a legal representative has violated these general guidelines and, if so, how to exercise its discretion to impose any or all of the sanctions listed in [the rules]').

[51] Restatement (Third) of the U.S. Law of International Commercial and Investor-State Arbitration ch. 3 (Am. L. Inst. 2023)

For example, the LCIA Annex that introduced arbitrator powers to disqualify and otherwise regulate counsel was spearheaded by the late, great Johnny Veeder. His global prominence as a leading arbitrator was essential to have a leading institution adopt such a distinctive reform.[52] It is also not accidental that Veeder was prominent within the leadership of the LCIA. Meanwhile, the Task Force that promulgated the IBA Guidelines on Party Representation in International Arbitration was led and overwhelmingly populated by not just arbitration practitioners, but leading arbitrators.[53] While their acceptance is not complete,[54] whatever credibility they enjoy is at least in part thanks to endorsement from prominent arbitrator and then-president of the International Chamber of Commerce, one of the oldest and most prestigious arbitral institutions.[55]

The next section turns to the institutional and normative structures that support this emerging professional identity—particularly the development of specialized knowledge and formal training.

C. **Specialized Knowledge, Expertise, and Training**

One of the hallmarks of a profession is the possession of specialized knowledge and expertise, typically acquired through formal education and internalized through structured training pathways. This section argues that international arbitrators not only possess such specialized knowledge but increasingly acquire and transmit it through institutional mechanisms that closely mirror those found in conventional professions. This process is grounded in practical

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[52] S. Jhangiani KC 'How Far do the New LCIA Guidelines for Parties' Legal Representatives and the IBA Guidelines on Party Representation go?' (2014) Kluwer Arbitration Blog < https://legalblogs.wolterskluwer.com/arbitration-blog/how-far-do-the-new-lcia-guidelines-for-parties-legal-representatives-and-the-iba-guidelines-on-party-representation-go/>

[53] The IBA Guidelines on Party Representation in International Arbitration (2013) < chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.ibanet.org/MediaHandler?id=6F0C57D7-E7A0-43AF-B76E-714D9FE74D7F> . The IBA Guidelines on Party Representation received considerable pushback, mainly on grounds that the Task Force did not include international arbitrators with civil law backgrounds and, as a consequence, adopted a common-law and US-practice oriented approach to topics like document production. See M.Schneider, 'Yet another opportunity to waste time and money on procedural skirmishes: The IBA Guidelines on Party Representation' (2013) 31 ASA Bulletin 497.

[54] The IBA Guidelines on Party Representation are currently under revision, but the interesting point is that they are being revised, not abandoned, despite the vigorous pushback.

[55] A. Mourre 'The Party Representation Guidelines' tenth anniversary' (2023) IBA Arbitration Committee Articles < https://www.ibanet.org/the-party-representation-guidelines-10th-anniversary-mourre>

developments, institutional innovation, and widespread community endorsement and provide a strong counterpoint to Moreira's claim that arbitrators lack distinct professional expertise or formal training infrastructure.

In arbitration markets, parties and institutions do not appoint just any skilled lawyer or legal professional. Instead, they seek individuals with proven, context-specific expertise. This includes mastery of procedural nuances across institutional rules (e.g., ICC, ICSID, LCIA), familiarity with cross-cultural hearing dynamics, command of both common and civil law evidentiary techniques, and experience drafting enforceable awards that adhere to evolving standards of due process. These requirements are not generic legal skills or even generic arbitration skills. They are instead unique international arbitration competencies that have become institutionalized as prerequisites for appointment.[56]

Empirical surveys support the view that international arbitrator experience is an essential criteria for appointment. The Queen Mary University of London 2018 International Arbitration Survey found that 93% of respondents considered prior experience as an arbitrator either "very important" or "somewhat important" in their appointment decisions.[57] This preference for repeat appointees underscores the profession's reliance on demonstrated arbitral expertise as a distinct qualification.

The centrality of this specialized knowledge is also revealed by how difficult it is to secure a first appointment. Arbitral institutions, including the ICC and ICSID, openly acknowledge that first-time appointments are subject to intense scrutiny. At the ICC, the Secretariat typically requires not only demonstrable legal competence, but also familiarity with arbitration practice and institutional rules, often evidenced through participation in training programs or service as tribunal secretary. This practical barrier to entry functions as a form of

[56] T. Schultz and R. Kovacs, 'The Rise of a Third Generation of Arbitrators? Fifteen Years after Dezalay and Garth' (2012) 28 Arbitration International; C. Rogers, 'Arbitrator Intelligence is Dead! Long Live arbitrator intelligence!' (2024) Kluwer Arbitration Blog < https://legalblogs.wolterskluwer.com/arbitration-blog/arbitrator-intelligence-is-dead-long-live-arbitrator-intelligence/>

[57] Queen Mary University of London, White & Case '2018 International Arbitration Survey: The Evolution of International Arbitration' (2018) < chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.qmul.ac.uk/arbitration/media/arbitration/docs/2018-International-Arbitration-Survey---The-Evolution-of-International-Arbitration-(2).PDF>

reputational gatekeeping, akin to credentialing processes in law, medicine, or accountancy.

Perhaps even more important than these general preferences and trends, over the past two decades, a wide range of formal training and mentorship programs have emerged to institutionalize this expertise. The Chartered Institute of Arbitrators (CIArb) offers multi-tiered accreditation culminating in its prestigious Fellowship designation (FCIArb). These programs require successful completion of both written and oral assessments, substantial arbitration experience, and ongoing professional development.[58] Similarly the ICC has developed an Advanced Arbitration Academy, which provides an intensive two-year program that trains participants in drafting awards, managing hearings, and navigating institutional procedures.[59] Participants often go on to serve as tribunal secretaries or assistant arbitrators—roles that are increasingly seen as stepping stones to first appointments.

Academic institutions have followed suit. Specialized LLMs and executive programs in arbitration are now available at Queen Mary University of London, University of Miami, Stockholm University, MIDS (Geneva), and Sciences Po.[60] These programs include not only doctrinal instruction taught by leading arbitrators but also training in skills unique to arbitral work.[61]

Mentorship programs have also developed as a similar demonstration that international arbitrators hold themselves out as, and are regarded as, possessing unique professional knowledge and skills. For example, the Rising Arbitrators Initiative (RAI), pairs experienced arbitrators with early-career aspirants, offers structured feedback on award writing and procedural conduct, and maintains a

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[58] Chartered Institute of Arbitrators, 'Our Membership Grades' < https://www.ciarb.org/membership/routes-to-membership/>

[59] ICC, 'ICC announces new editions of Advanced Arbitration Academy' (225) https://iccwbo.org/news-publications/news/icc-announces-new-editions-of-advanced-arbitration-academy/.

[60] Queen Mary University of London, Comparative and International Dispute Resolution LL.M. < https://www.qmul.ac.uk/postgraduate/taught/coursefinder/courses/comparative-and-international-dispute-resolution-llm/>; University of Miami White & Case International Arbitration LLM < https://admissions.law.miami.edu/academics/llm/international-arbitration/>; Stockholm University LL.M. in International Commercial Arbitration < https://utbildning.su.se/english/education/course-catalogue/ji/jic1m> ; Geneva LL.M. in International Dispute Settlement < https://mids.ch/> ; Sciences Po LL.M. in Transnational Arbitration & Dispute Settlement < https://www.sciencespo.fr/ecole-droit/en/academics/llm-in-transnational-arbitration-and-dispute-settlement/>.

[61] *Id.*

curated directory of members that is circulated to appointing institutions and parties.[62] Various other programs, such as Delos's Young Practitioners Group, Young ICCA and Young ITA offer workshops, practice simulations, and institutional networking opportunities specific to young lawyers aspiring to become international arbitrators.[63]

Finally, arbitration-specific educational content is disseminated through a growing infrastructure of professional publications, webinars, and practitioner guides. Gary Born's treatise on international arbitration, now in its third edition, has become a de facto standard in many LLM courses. Institutions like the LCIA, SIAC, and ICDR publish guidelines and protocols that serve as both practical tools and pedagogical resources. The annual publication of awards and challenge decisions (especially from ICSID and LCIA) provides a growing body of case-based learning for both new and established arbitrators.

Taken together, these developments demonstrate not only the existence of specialized knowledge but also its formal transmission through professional training pathways. While there is no global license to become an arbitrator, the expectation that arbitrators will undergo formalized education and demonstrate field-specific expertise has become deeply embedded in the community's practices. In this respect, the evolution of arbitration mirrors what Freidson describes as the institutionalization of "official knowledge," meaning a shared, legitimized domain of competence, subject to peer review and increasingly codified.[64]

These examples also push back against Moreira's assertion that arbitrators lack standardized education or licensing. As with many transnational professions (e.g., management consultants, global accountants, international development specialists) rely on soft credentialing and reputation-based exclusion, international arbitrators maintain a high threshold for legitimacy and acceptance that is developed through community norms, institutional practices, and formalized training.

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[62] Rising Arbitrators Initiative < https://risingarbitrators.com/>

[63] Delos-Y < https://delosdr.org/delos-y/>, Young ICCA < https://www.youngicca.org/>, Young ITA < https://www.cailaw.org/Institute-for-Transnational-Arbitration/Young-ITA/index.html>

[64] Eliot Freidson, *Professionalism: The Third Logic* (Polity Press 2001) 127.

The next section turns to a related marker of professional status: the development and enforcement of ethical norms through self-regulatory mechanisms and peer oversight.

D. Self-Regulatory Ethical Standards

A hallmark of professionalization is the development and enforcement of ethical norms through self-regulation. In international arbitration, this process has been driven not by states or public regulators but by arbitrators themselves, along with the arbitral institutions and related transnational professional associations supporting those efforts. This section analyzes how these ethical frameworks have developed and demonstrates how they fulfill many of the same functions as formal professional regulation, offering further evidence of arbitration's transformation into a profession.

Institutional challenge procedures provide a primary mechanism for ensuring arbitrator accountability. Historically, The LCIA, for example, has been at the forefront of increasing transparency in this area. Since 2011, the LCIA has published redacted summaries of decisions on arbitrator challenges, and in December 2024, it released a batch of 24 additional full-text decisions covering the period from 2017 to 2022. These cases illustrate how arbitral institutions apply evolving norms of independence and impartiality to real-world disputes, providing both deterrence and guidance. Of the 1,864 LCIA cases between 2017 and 2022, only 32 challenges were filed (just 1.7% of cases), and only one challenge was upheld—demonstrating both the high threshold for disqualification and the robust trust placed in arbitrators by parties and institutions alike.

By far the most important development in arbitrator self-regulation was promulgation in 2004 of the IBA Guidelines on Conflicts of Interest. Like other innovations in the field, the Task Force that conceived of and promulgated the first version was comprised exclusively of leading international arbitrators.

The contents and emergence of the IBA Guidelines as the most prominent source of regulation of arbitrator conflicts demonstrates how arbitrator self-regulation involves contests for control among both international and domestic professional organizations. When first introduced as a new soft law source, the Guidelines encountered significant scepticism from individual arbitrators and

institutions.[65] For example, both the ICC and the LCIA expressed skepticism about their utility and doubt they would ever be used in institutional challeges.[66] Despite initial resistance, the IBA Guidelines on Conflicts quickly became an essential touchstone for parties, arbitrators, and institutions. As one commentator noted, their widespread "adoption shows that they have been gradually accepted as the international reference, which is evidenced by the fact that arbitral tribunals and state courts alike refer to them."

An interesting example of contest with national legal professions is how the IBA Guidelines treat alleged conflicts of interest among barristers from the same chambers. In domestic English courts, barristers from the same chambers may appear on opposite sides of the same case or, in domestic arbitrations, as arbitrator and counsel in the same case. International tribunals have also independently determined that institutional and professional relationships between arbitrators and attorneys in the same case may justify disqualification. One of the most prominent cases is *Hrvatska Elektroprivreda d.d. (HEP) v. Republic of Slovenia*.[67] In that case, the tribunal disqualified an English barrister who was a member of the same barristers' chambers as the president of an arbitral tribunal. In disqualifying the barrister, the tribunal acknowledged that "[b]arristers are sole practitioners" and barristers' "Chambers are not law firms."[68]

The tribunal nevertheless disqualified the barrister because, in international arbitration, "foreign parties were unfamiliar with how barristers' chambers differed from conventional law firms."[69] The tribunal's decision rested on the assumption that, while two barristers from the same chambers may sometimes be tolerable in the same arbitration domestically, that domestic rule could be confusing and undermine party confidence in the legitimacy of international

[65] Markham Ball, 'Probity Deconstructed: How Helpful, Really, Are the New International Bar Association Guidelines on Conflicts of Interest in International Arbitration', 21(3) Arb. Int'l 323, 323–41 (2005); V.V. Veeder, 'The English Arbitration Act 1996: Its 10th and Future Birthdays' (2006), <http://www.expertguides.com/default.asp?Page=108GuideID=1508CountryID=117> ('[T]he IBA Guidelines on Conflict of Interest have provided a well-sprung platform for new tactical challenges to arbitrators, a malign practice that appears to be increasing everywhere.').

[66] Born 1891–2.

[67] *Hrvatska Elektroprivreda d.d. v. Republic of Slovenia*, ICSID Case No. ARB/05/24, Order Concerning the Participation of Counsel [May 6, 2008].

[68] *Id*. at 8.

[69] *Id*. at 4.

arbitration. The revised version of the IBA Guidelines expressly adopted this rule.[70]

Another significant development is the emergence of professional organizations with enforcement capabilities. Most notably, the Chartered Institute of Arbitrators (CIArb) maintains entry requirements that include formal training, examinations, and interviews. Members are subject to a Code of Professional and Ethical Conduct and a unique formal disciplinary process,[71] which allows for investigation and sanctioning of members who violate its Code of Professional and Ethical Conduct. While this authority extends only to CIArb members, in some jurisdictions—especially in parts of Africa, Asia, and the Middle East, CIArb accreditation is considered an essential credential for appointment. On occasion, CIArb has in fact expelled members for ethical violations, such as prolonged delays or misrepresentations in communication with parties, further demonstrating that meaningful professional discipline is both possible and practiced in international arbitration. This enforcement mechanism, though not centralized or state-backed, mimics the disciplinary role of bar associations or medical colleges in national systems.

Similarly, the American Arbitration Association (AAA) offers another model of internal regulation. It maintains a national roster of arbitrators and sets forth "stringent standards of ethics and experience." Arbitrators may be placed on inactive status if one of their awards is challenged for non-disclosure. If the issue is confirmed by a court or deemed significant by internal review, the AAA may remove the arbitrator from its list altogether. In this way, the AAA maintains control over its roster through both peer standards and market reputational effects.

Even arbitrators themselves contribute to norm generation through their decisions. In ICSID arbitrations, co-arbitrators rule on challenges to other tribunal members, and annulment committees evaluate whether ethical breaches

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[70] IBA Guidelines on Conflicts of Interest in International Arbitration (2014) < chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.ibanet.org/MediaHandler?id=e2fe5e72-eb14-4bba-b10d-d33dafee8918>

[71] Chartered Institute of Arbitrations Disciplinary Rules < https://www.ciarb.org/about-us/governance/disciplinary-rules/ >. *See* also The Chartered Institute of Arbitrators v John D Campbell QC, Decision of the Disciplinary Tribunal of CIArb (5 May 2011) <www.ciarb.org> (decision expelling arbitrator 'from the Chartered Institute of Arbitrators with immediate effect' and ordering payment to the Institute 'of £3,000 plus VAT towards the costs incurred by the Institute').

justify nullifying awards. One prominent example is the annulment of an ICSID award in *Eiser and Energia Solar v. Spain*, where the committee found that the arbitrator's failure to disclose multiple past engagements with the same expert firm undermined the legitimacy of the proceeding.[72] The case later informed revisions to the IBA Guidelines, demonstrating how peer review within arbitration can feed into broader ethical standards.[73]

These layered systems of peer control—spanning institutions, associations, training bodies, and tribunals—provide robust ethical oversight. They also serve a second-order function by educating current and future arbitrators about acceptable conduct and reinforcing community standards. While these mechanisms do not rely on licensing or state sanction, they functionally fulfill the purpose of safeguarding the profession's integrity and the public's trust.

These examples also provide a meaningful response to Moreira's observation that international arbitrators lack formal licensing or centralized regulation. While this observation is itself accurate, the absence of formal licensing and regulation should not be understood as indicating an underdeveloped field. Instead, as a transnational profession, international arbitrators rely on decentralized forms of authority, such as reputational hierarchies, peer-based training programs, and soft law norms, to regulate conduct, ensure competence, and preserve legitimacy. These mechanisms, while informal and dispersed, collectively function as a system of self-governance that mirrors many features of traditional professions operating under state-based oversight.

The next section explores how this institutional maturation is accompanied by broader public and institutional recognition—another key criterion for understanding the consolidation of professional status.

E. Public and Institutional Recognition

A defining attribute of a profession is the extent to which its jurisdictional claims are accepted not just internally by practitioners but also externally by the legal and political systems within which it operates. For international arbitrators, such public and institutional recognition is manifest not only in the enforcement of

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[72] *Eiser Infrastructure Limited and Energia Solar Luxemburg S.à r.l. v Kingdom of Spain* (ICSID Case No ARB/13/36)

[73] IBA Guidelines on Conflicts of Interest in International Arbitration (2014) at 19 < chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.ibanet.org/MediaHandler?id=e2fe5e72-eb14-4bba-b10d-d33dafee8918>

awards under instruments like the New York Convention, but more significantly in the growing willingness of states and private parties to entrust them with jurisdiction over legal claims that historically fell under the exclusive purview of public courts.

In recent decades, there has been a marked expansion in the scope of issues deemed arbitrable. Arbitrators are now regularly called upon to adjudicate disputes involving statutory and regulatory regimes—claims that implicate antitrust and competition law, securities fraud, corruption and money laundering, and even environmental and human rights obligations. This expansion is especially noteworthy in light of early judicial skepticism toward the arbitrability of such matters, based on the presumption that they implicate public policy concerns too sensitive for resolution by private actors.

Yet across jurisdictions, courts have increasingly upheld the validity of arbitration clauses covering these matters, and have shown substantial deference to arbitral awards in these fields. For example, U.S. courts now routinely enforce arbitral awards involving securities law and antitrust claims, as long as minimal procedural safeguards are met. Even the European Union, traditionally more cautious about privatizing enforcement of public norms, has permitted the arbitration of competition law disputes, provided that national courts retain a limited review power to ensure compliance with substantive EU law. Despite this retained oversight, very few awards have actually been overturned on public policy grounds, suggesting a de facto trust in arbitrators' capacity to handle such sensitive matters.

Moreover, arbitral awards enjoy consistently high levels of enforcement across national legal systems. The vast majority of jurisdictions that are party to the New York Convention honor their commitments to recognize and enforce foreign arbitral awards, subject only to narrow and exceptional defenses such as incapacity, public policy violations, or procedural irregularities. Statistics from institutions like UNCITRAL and ICC suggest that challenges to enforcement under the Convention are rare and generally unsuccessful. National courts in countries ranging from the United States to Singapore, Brazil, and Switzerland routinely uphold awards, even in high-stakes and politically sensitive cases. This strong track record of enforcement confirms that arbitral decisions are not merely private instruments but are accorded the legal force and reliability of binding judgments within most domestic systems.

This functional delegation of adjudicatory authority reflects a broader structural reliance on arbitrators as legitimate dispute-resolvers—even in areas where public enforcement interests are implicated. In sectors such as pharmaceuticals, telecommunications, and cross-border finance, arbitration has become the preferred method for resolving disputes that blend commercial and regulatory elements. States themselves, through their procurement contracts, concession agreements, and bilateral investment treaties, continue to name arbitration as the default mechanism for resolving public-private disputes.

V. Friction and the Contest Over Jurisdictional Boundaries

The analysis above has shown that international arbitrators increasingly exhibit the core characteristics of a transnational profession: they operate within complex, multi-level regulatory networks; they derive legitimacy from reputational capital, peer review, and ethical governance; and they exercise meaningful control over a specialized domain of work. However, professional status is not merely descriptive. It is also normative.

Professional status not only confers legitimacy, but also responsibility. This final section considers the implications of this status by turning to two contemporary contexts that demonstrate not only friction in international arbitrators' exercise of jurisdiction (in both Abbott's metaphoric sense and in the literal sense). The legitimacy of arbitration is being contested on several fronts, including cases at the Court of Arbitration for Sport (CAS), investor-state dispute settlement (ISDS), and cases involving corruption (demonstrated by the *PI&D v. Nigeria*) is being contested, often with a sharp focus on the professional identity of arbitrators themselves.

These points of friction raise potentially existential questions for modern international arbitration. Where arbitral mechanisms perform quasi-public functions or produce outcomes with systemic regulatory consequences, the presumption that arbitration is merely a private contractual mechanism becomes increasingly untenable. Meanwhile, if the current geopolitical upheaval suggests a re-nationalization, policy priorities—such as antitrust, environmental protection, anti-corruption, and labor rights—may be more likely to draw attention and vigorous responses if they are perceived as being flouted.[74] To preserve their legitimacy, arbitrators must affirmatively demonstrate their

[74] For an early expression of this concern, see Philip McConnaughay, 'The Risks and Virtues of Lawlessness: A "Second Look" at International Commercial Arbitration' (1999) 93(3) *Northwestern University Law Review* 453, 484–86.

capacity and willingness to confront these legal imperatives and reflect them in both process and outcome.

The risk is that failure to address these challenges may invite external intervention through judicial scrutiny (as in CAS) or attempts at legislative dismantling (as in ISDS). Perhaps worse, there could be more general reputational erosion in the legitimacy of international arbitration and a reversal of national deference shown to international arbiral awards. International arbitrators' professional status, strategically deployed, could be bulwark against potential backsliding.

A. Sports Arbitration and CAS

Sports arbitration has for years been the locus of an ongoing tension between European policy and protections for individual rights and efficacious resolution of sports disputes, which are often resolved on-the-spot during the relevant sporting event The friction recently reached a tipping point with the European Court of Justice's judgment in *Seraing v. FIFA/CAS*.[75] The ECJ ruled that EU courts must be empowered to conduct in-depth judicial reviews of CAS awards to ensure alignment with EU law and public policy, especially when arbitration is compulsory.[76]

This tension recently evolved into a full-fledged flashpoint when the European Court of Justice issued its judgment in *International Skating Union* (Case C-124/21 P). In that case, the ECJ raised serious concerns about the mandatory nature of arbitration before the Court of Arbitration for Sport (CAS), particularly where it may deprive athletes of meaningful access to judicial review.

Long prior to these decisions, CAS understook significant internal reforms aimed at reinforcing its legitimacy and autonomy. For example, back in 2009 it introduced a formal prohibition on "double hatting," which prohibits individuals

[75] Proper Cite to case https://curia.europa.eu/juris/liste.jsf?nat=or&mat=or&pcs=Oor&jur=C%2CT%2CF&num=C-124%252F21P&for=&jge=&dates=&language=en&pro=&cit=none%252CC%252CCJ%252CR%252C2008E%252C%252C%252C%252C%252C%252C%252C%252C%252C%252Ctrue%252Cfalse%252Cfalse&oqp=&td=%3BALL&avg=&lg=&page=1&cid=10130961

[76] This decision echoes an earlier ECJ case that determined that the arbitration imposed on athletes does not guarantee an effective judicial review of EU competition law rules and undermines the protection of rights derived from the direct effect of EU law, as well as the effective compliance with Articles 101 and 102 TFEU. *International Skating Union* (Case C-124/21 P) proper cite needed

who serve as CAS arbitrators from also serving as counsel before CAS.[77] Another longer-standing policy requires publication of all awards to enhance transparency and ensure all parties have access to CAS precedents.[78] These reforms can be understood as a form of strategic self-regulation, meaning a bid to retain professional jurisdiction over sports disputes by proactively responding to external pressures.

Ultimately, however, these reforms may not be sufficient to stave off critics or courts that are trained on controlling EU policy.[79] However, the mere fact that CAS awards may be subject to a more searching public policy review does not mean necessarily that they will be less enforceable in the long run.[80] It does, however, suggest that CAS arbitrators should exercise greater care and attention to athletes' rights by CAS arbitral tribunals.

B. Investor-State Arbitration (ISDS)

A similar dynamic is at play in the field of investor-state dispute settlement (ISDS), which is a treaty-based regime that necessarily involves a much greater presence of States and State interests. In the ISDS context, the EU has pursued a sustained campaign to reduce or eliminate the role of arbitration in resolving intra-EU investment disputes, culminating in the termination of intra-EU BITs and the EU Commi ssion's opposition to arbitration under the Energy Charter Treaty (ECT).[81] These efforts are animated by what is commonly known as a "backlash" against investment arbitration, which is in turn tied to perceptions that investment arbitrators are biased in favor of investors and decisionmaking

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[77] Section 18, Code of Sports-Related Arbitration, Court of Arbitration for Sport (2010).

[78] CAS cases can be found here: https://jurisprudence.tas-cas.org/Shared%20Documents/Forms/AllItems.aspx?Paged=TRUE&p_SortBehavior=0&p_OrderNb=2012902725%2E00000&p_FileLeafRef=2725%2Epdf&p_ID=1192&PageFirstRow=27501&&View=%7B3837CF44-2EC6-4D28-BE5D-893421E967FA%7D

[79] For example, the EU Advocate General's Opinion in *Seraing* framed CAS awards as not equivalent to commercial arbitration awards, underscoring the need for full judicial review in the interest of effective judicial protection. Proper cite needed: https://curia.europa.eu/juris/document/document.jsf?text=&docid=294268&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=22382324

[80] In *Sun Yang v Word Anti-Doping Agency (WADA) and International Swimming Federation*, the Swiss Federal Tribunal overturned an award made by a CAS tribunal upholding a decision made by the International Swimming Federation (FINA) Doping Panel. [cite] The decision was based on racist comments by the arbitrator during the arbitration but discovered after the close of proceedings.

[81] Catharine Titi, 'The European Union's Proposal for an International Investment Court: Significance, Innovations and Challenges Ahead' (2019) 64(3) *Netherlands International Law Review* 439, 441–443.

some prominent cases whose outcomes were inconsistent.[82] More generally, the backlash was tied to perceptions that investment arbitrators were not professionals but, as *The Economist* called them, "secretive tribunals of highly paid corporate lawyers".[83]

One consequence of the deep skepticism about investment arbitrators is a state-initiated regulatory response in the UNCITRAL/ICSID Code of Conduct for Arbitrators (the "Code"), which has recently been ratified.[84] Unlike other arbitration-related reforms, this Code is best characterized as external regulation driven by States specifically addressed at reigning perceived excesses. Nevertheless, the drafting process, which progressed over a period of __ years demonstrates continued contests over boundaries. The extensive public comments often included comments by prominent individual arbitrators.[85]

For example, arbitrators and others stakeholders pushed back against initial proposals to eliminate double-hatting completely.[86] The result was significant refinements, including a transition from elimination of double hatting to cooling off periods.[87] Sweeping disclosure obligations were contested as unrealistic and, as a result, significantly curtailed in the final version.

Ultimately, critics of ISDS and particularly the EU hope to displace arbitration altogether in treat-based investment disputes. Even if some the substantial hurdles to creation of an international investment court can be overcome,

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[82] SD Franck, 'Empirically Evaluating Claims About Investment Treaty Arbitration' (2007) 86(1) North Carolina Law Review, 1-88; Michael Waibel and others (eds), *The Backlash Against Investment Arbitration – Perception and Reality* (Wolters Kluwer 2010).

[83] See Investor-State Dispute Settlement: The Arbitration Game, ECONOMIST (Oct. 11, 2014). A similar view was expressed by the EU Trade Commissioner in March 2015 tweet: "We want the rule of law, not the rule of lawyers." See Cecilia Malmstro¨m (@MalmstromEU), TWITTER (Mar. 18, 2015, 7:30 a.m.), at https://twitter.com/malmstromeu/status/578201842678640641. These sources, and a more general critique of investment arbitrators, are found in Joost Pauwelyn, The Rule of Law Without the Rule of Lawyers? Why Investment Arbitrators Are from Mars, Trade Adjudicators from Venus, 109 AJIL 761 (2015).

[84] Cite to final version

[85] Cites to comments from Brigitte Stern and another (Van Houtte? Or Hanitau?).

[86] *See J*ohn Crook, 'Dual Hats and Arbitrator Diversity: Goals in Tension' (2019) 113 American Journal of International Law Unbound 248.

[87] Cites to code

however, observers believe the result not in an elimination of investment arbitration but instead a more fragmented market for investment disputes.[88]

In addition to the inherent competition implied for investment disputes, many so-called "commercial" cases involving State parties will remain.[89] International arbitration will need to reassert its legitimacy to retain States' confidence in putting arbitration clauses in their contracts.

C. International Arbitrators and Corruption

In the recent English High Court case *Nigeria v. P&ID*, Justice Knowles not only overturned an $11-billion award against Nigeria.[90] He also pointed out that the case had consequences for the legitimacy of international arbitration. He stated in no uncertain terms that the case "touches the reputation of arbitration as a dispute resolution process" and that this case should "provoke debate and reflection among the arbitration community" about its future.[91]

The facts of Nigeria v P&ID were stunning but not entirely unique. Recently, several multi-billion (or $100m+) awards have been undone by corruption that the arbitral tribunal and counsel failed to address adequately.[92]

Arbitration can be an obstacle to corruption or an instrument to facilitate corruption, as the court in *PI&D* suggests it should be. International arbitrators will determine in the first instance whether it is an obstacle or an instrument. However, courts and potentially regulators will ultimately decide the consequences of that choice and, hence, the future legitimacy of international arbitration.

D. The Responsibilities of Arbitrators as Professionals

Professional status implies more than expertise. That status also implies a mandate to exercise influence, guide ethical development, and protect the integrity of the system from within. That status also implies the earned authority

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[88] Some commentators have opined about what is sometimes called a "multi-door" approach. Not sure who has actually published. Can you see if you can find sources in law review articles basically predicting what will happen with new investment court.

[89] In this context, the term "commercial" cases refers to when arbitral jurisdiction arises not out of an investment treaty or statute, but out of a contract between a foreign party and a State. Some of these contracts, such as concession agreements, implicate both investment arbitration and so-called commercial arbitration.

[90] cite

[91] cite

[92] *See e.g.,* Stati v Kazakhstan, cite to original case. See if you can also find news reports of the Belgian court's critique and the English court indicating that there was prima facie case of fraud.

to exercise that mandate. This final section considers what the professional status of international arbitration might mean with respect to these three areas of friction or contest for jurisdiction.

First, in the face of ISDS critiques, arbitrators should resist adopting a purely defensive posture. Instead, they should seek out areas of constructive engagement that both reassure critics and reinforce arbitration's legitimacy. One example is how the IBA Guidelines on Conflicts of Interest have evolved to absorb jurisprudential developments, such as the annulment decision in *Eiser v Spain*, which found a serious breach of disclosure obligations by an arbitrator.[93] The 2024 revisions to the IBA Guidelines reflect this shift and show how arbitrators can help drive ethical evolution through institutional adaptation.[94]

A more ambitious opportunity lies in how arbitrators respond to the final ICSID-UNCITRAL Code of Conduct. Many practitioners have expressed concerns over certain provisions, including broad disclosure requirements and "cooling-off" periods between service as arbitrator and counsel.[95] While there may be merit to these critiques, professional arbitrators should consider embracing the Code as a foundation for legitimacy and public accountability. One concrete step would be the creation—under the auspices of the IBA, ICCA, CIArb, the PCA, or another reputable body—of a voluntary registry of arbitrators who pledge to abide by the Code. A soft-law mechanism of this kind could bridge the gap between decentralized self-regulation and enforceable ethical oversight, allowing parties and the public to see in advance a commitment by arbitrators to contribute to reform in the field.[96]

International arbitrators must also respond to pressures stemming from cases involving CAS and the enforcement of mandatory public law norms, such as anti-corruption or competition laws. At CAS, perceived procedural shortcomings have led to criticism from the European Court of Human Rights

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[93] *Eiser Infrastructure Ltd and Energia Solar Luxembourg S.à r.l. v Kingdom of Spain*, ICSID Case No. ARB/13/36, Annulment Decision (11 June 2020) [239]–[243].

[94] See International Bar Association, *IBA Guidelines on Conflicts of Interest in International Arbitration* (2024), Guideline __.

[95] See Chiara Giorgetti, 'The Draft Code of Conduct for Adjudicators in Investor-State Dispute Settlement: A Step in the Right Direction?' (2021) 21(2) *The Law and Practice of International Courts and Tribunals* 160.

[96] Chiara Giorgetti, The Draft Code of Conduct for Adjudicators in Investor–State Dispute Settlement: A Low-hanging Fruit in the ISDS Reform Process, *Journal of International Dispute Settlement*, Volume 14, Issue 2, June 2023, Pages 176–191, https://doi.org/10.1093/jnlids/idab032 (discussing options for implementation of the Code, several of which require cooperation from arbitrators).

and others regarding independence, due process, and access to justice.[97] In ISDS and commercial arbitration, concerns persist about whether arbitrators sufficiently address allegations involving public policy violations.

In both contexts, arbitrators' professional status imposes an obligation to go beyond procedural minimalism. In cases involving mandatory rules or core public values, arbitrators should ensure that arguments on these issues are fully vetted through transparent procedures, and clearly addressed in reasoned awards. As Jan Paulsson has argued, legitimacy in arbitration increasingly depends on perceptions of procedural justice, not merely party consent.[98] In this sense, arbitrators' professionalism must be demonstrated in their responsiveness to the public dimensions of private adjudication.

With respect to challenges to their jurisdiction at CAS or with respect to corruption or other mandatory laws, international arbitrators can in their procedures ensure that arguments regarding essential public policies are fully vetted. They can ensure in their awards that arguments regarding these issues are fully explored and explained, rather than folded into abbreviated analysis.

Several organizations already exist to express and institutionalize the professional voice of international arbitrators. The Chartered Institute of Arbitrators (CIArb), the International Bar Association's Arbitration Committee, and ICCA all play key roles in norm-development, education, and ethical guidance. These institutions should take further steps to consolidate a professional identity for arbitrators by coordinating initiatives like the Code of Conduct pledge, expanding platforms for feedback on ethical dilemmas, and promoting diversity in arbitrator appointments.[99]

Moreover, arbitrators themselves should more consciously act as custodians of their profession. They must not only abide by ethical norms but also shape them. One way they shape norms is through their speech, both within arbitral proceedings and awards, and in how they engage publicly with issues relating to international arbitration. As Faulconbridge and Muzio emphasize, professions earn legitimacy by constructing and policing their own

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[97] *The Legacy of Bosman: Revisiting the Relationship between EU law and Sport*, edited by Antoine Duval and Ben Van Rompuy. (Vienna/The Hague: Springer/ T.M.C. Asser Press, 2016)

[98] Jan Paulsson, 'The Idea of Arbitration' (Oxford University Press 2013) 94–96.

[99] See CIArb, *Professional Conduct Rules* (2020); ICCA, *Guidelines for Arbitrator Conduct* (forthcoming); IBA, *Arbitration Committee Reports* https://www.ibanet.org/LPRU/Arbitration-Committee accessed 6 August 2025.

jurisdictional boundaries through norm entrepreneurship.[100] This requires not only technical expertise but public engagement. The legitimacy of international arbitration depends not on retreating into contractarian formalism, but on embracing the role of the arbitrator as a public-facing transnational professional.

VI. Conclusion

This Article has argued that international arbitrators now satisfy the sociological criteria for constituting a profession—though not in the conventional, state-licensed sense. Instead, they exemplify what scholars of transnational professions have described as decentralized, networked communities that derive authority from epistemic legitimacy, reputational control, and integration into global governance systems. Through internal reforms, institutional innovation, and increasingly formalized training and ethics regimes, arbitrators have built structures of self-regulation and professional identity that functionally mirror those of traditional professions. These include not only soft law instruments like the IBA Guidelines and institutional challenge procedures, but also at least one formal disciplinary system at CIArb that has investigatory and sanctioning powers. Such mechanisms offer functional analogs to bar associations in national legal systems and are a clear marker of consolidated professional authority. Meanwhile, their authority has expanded across multiple dimensions (symbolic, procedural, and substantive) even as they continue to operate outside the boundaries of any individual national jurisdiction.

Importantly, this Article has reframed professionalization of international arbitrators not as a binary status but as an ongoing, contested process. Drawing on Abbott's framework, the evolution of international arbitration can be understood as a series of jurisdictional contests—both with national legal institutions and within the arbitration field itself—over who defines the norms and boundaries of adjudicatory authority. Even when arbitrators appear to lose these contests, such as in EU efforts to curtail ISDS or impose more judicial oversight of CAS, their active participation in regulatory debates reflects a deeper project of asserting and negotiating professional control. The emergence of professional organizations like CIArb as regulatory interlocutors further underscores this dynamic. Yet the absence of coordinated engagement by other institutions—such as the Institute of Transnational Arbitration, ICCA, Arbitra,

[100] James R Faulconbridge and Daniel Muzio, 'The Rescaling of the Professions: Towards a Transnational Sociology of the Professions' (2012) 27(1) *International Sociology* 109, 19–22.

or Arbitrator Chambers—highlights the profession's still-fragmented institutional voice, particularly in public legal forums.

Moreira's thoughtful analysis requires that the lack of state-imposed licensing and full-time exclusivity be taken seriously, but does not necessarily lead to the conclusion that these features are disqualifying. In a transnational context, where legal authority is diffuse and sovereignty is negotiated, professional identity is constructed through practice, discourse, and governance participation rather than formal credentials alone. Indeed, the increasingly routine use of the term "international arbitrator" as a self-standing identity demonstrates the discursive consolidation of a profession-in-being. Moreover, the profession's legitimacy is buttressed by widespread deference from national courts, robust enforcement of awards, and the willingness of public and private actors alike to entrust arbitrators with high-stakes disputes involving public values.

Looking forward, the professional project of international arbitrators remains incomplete at the margins, but has consolidated at the core and appears to be accelerating. It may well continue not as a monolithic consolidation, but through emerging sub-specializations, such as sports, investment, energy, maritime, technology, which develop their own institutional supports, ethical codes, and representative bodies. These subfields, in turn, can reinforce the broader professional identity while addressing the practical and normative demands of increasingly complex dispute contexts. To meet this moment, arbitrators must continue to build collective infrastructure, deepen ethical clarity, and assert a stronger public-facing voice. In doing so, they not only consolidate their professional status but help shape the evolving landscape of global legal authority.