ASA BULLETIN

Founder: Professor Pierre LALIVE
Editor in Chief: Matthias SCHERER

Published by:
Kluwer Law International
PO Box 316
2400 AH Alphen aan den Rijn
The Netherlands
e-mail: lrs-sales@wolterskluwer.com

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Switzerland is generally regarded as one of the World's leading place for arbitration proceedings. The membership of the Swiss Arbitration Association (ASA) is graced by many of the world's best-known arbitration practitioners. The Statistical Report of the International Chamber of Commerce (ICC) has repeatedly ranked Switzerland first for place of arbitration, origin of arbitrators and applicable law.

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ASA Secretariat

4, Boulevard du Théâtre, P.O.Box 5429, CH-1204 Geneva,
Tel.: +41 22 310 74 30, Fax: +41 22 310 37 31;
info@arbitration-ch.org, www.arbitration-ch.org

CORRESPONDENCE

ASA Bulletin
Matthias SCHERER
Rue de la Mairie 35, CP 6569, CH-1211 Genève 6
Tel: +41 58 105 2000 – Fax: +41 58 105 2060
mscherer@lalive.law

(For address changes please contact
info@arbitration-ch.org/tel +41 22 310 74 30)

Published by Kluwer Law International
P.O. Box 316
2400 AH Alphen aan den Rijn
The Netherlands

Sold and distributed in North, Central and South America by Aspen Publishers, Inc.
7201 McKinney Circle
Frederick, MD 21704
United States of America

Sold and distributed in all other countries by Air Business Subscriptions
Rockwood House
Haywards Heath
West Sussex
RH16 3DH
United Kingdom
Email: international-customerservice@wolterskluwer.com

ISSN 1010-9153

This journal should be cited as ASA Bull. 2/2020

The ASA Bulletin is published four times per year.
Subscription prices for 2020 [Volume 38, Numbers 1 through 4] including postage and handling: 2020 Print Subscription Price Starting at EUR 391/ USD 518/ GBP 287.

This journal is also available online at www.kluwerlawonline.com.
Sample copies and other information are available at lrus.wolterskluwer.com

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Aligning Arbitrator Assistance with the Parties' Legitimate Expectations: Proposal of a 'Traffic Light Scale of Permissible Tribunal Secretary Tasks'

(Adapted from the doctoral thesis: 'Tribunal Secretaries in International Arbitration', Oxford University Press, 2019[1])

J. OLE JENSEN[2]

International arbitration – Tribunal Secretary – Assistance to Arbitral Tribunals – Arbitrator – Personal Mandate – Division of Labor – Legitimate Expectations – Transparency – Consent – Scrutiny of the Award

I. Introduction

At the turn of the millennium, assistance to arbitral tribunals was a non-topic. International arbitrators certainly had support. The 'secretary' of the arbitral tribunal was found in a good number of hearing rooms, had long been acknowledged in Swiss arbitration legislation,[3] and featured in the footnotes of arbitration treatises as well as in this very journal.[4] But this position did not raise much controversy. It was quietly assumed that arbitrators would have

1 J Ole Jensen, *Tribunal Secretaries in International Arbitration* (Oxford University Press 2019). The book has been reviewed by James Menz (2019) 35 Arb Int'l 387; Joshua Fellenbaum [2019] Asian Disp Rev 134; Fabio MR Cavalcante (2019) 16 Rev Bras Arb 211; and Michael Polkinghorne (2020) 37 J Int'l Arb (forthcoming).

2 Dr. iur., Rechtsanwalt, Associate, Wilmer Cutler Pickering Hale and Dorr LLP, London. Email: ole.jensen@wilmerhale.com.

3 Switzerland may be regarded as the first jurisdiction to have formally introduced the secretary position in a piece of legislation. See Swiss Inter-Cantonal Concordat on Arbitration of of 27 March 1969 art 7, 15.

4 An example is the interaction between Pierre Lalive and the ICC: Stephen Bond, 'Letter Dated 29 December 1988 from Secretary General of the ICC' (1989) 7 ASA Bull 82; Pierre Lalive, 'Secrétaire de tribunaux arbitraux: le bon sens l'emporte' (1989) 7 ASA Bull 1; Pierre Lalive, 'Inquiétantes dérives de l'arbitrage CCI (sur un récent "Oukase" du Secrétariat de la Cour d'Arbitrage CCI)' (1995) 13 ASA Bull 634; Pierre Lalive, 'Un post-scriptum et quelques citations' (1996) 14 ASA Bull 35; Eric A Schwartz, 'On the Subject of "Administrative Secretaries"' (1996) 14 ASA Bull 32.

some form of back-office support that did not need to be questioned.[5] For the time being, the tribunal secretary lived a quiet, unassuming life.

Two decades later, assistance to arbitral tribunals is the topic of institutional arbitration rules and guidelines, professional training courses, conferences, journal articles (and books, for that matter) and, not least, the basis for challenges to arbitrators and arbitral awards.[6] In principle, it is commendable that the arbitration community has shone a spotlight on its supporting cast. If scores of parties had increasingly feared that the arbitrators they have meticulously chosen did not decide the cases themselves, this would have posed a serious risk to the legitimacy and future success of arbitration. But the increased attention to tribunal secretaries also had its downsides. In some ways, tribunal secretaries are now aggrandized to a degree they neither deserve nor is good for their reputation. Rightfully, one experienced practitioner complains that '[c]urrently, the fact is that already the appointment of a single secretary to the arbitral tribunal is considered suspicious'.[7]

The truth is that there is no reason for general suspicion. In the large majority of cases, tribunal secretaries add quality and speed to the arbitral process, which is in the best interest of all stakeholders involved. After all, international arbitrators are service providers and in the service industry, the division of labor is a given. This applies to lawyers, accountants and bankers

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5 Gerald Aksen, 'Reflections of an International Arbitrator' (2007) 23 Arb Int'l 255, 256 ('My first case was before a man by the name of Lalive, not Pierre. Pierre has an older brother named Jean Flavian who was my first arbitrator, and of course he had a secretary. One always wondered if Jean Flavian decided the dispute or his secretary. But that's what happened in those days.').

6 In the past year alone, the following articles were published on the topic: Funke Adekoya, 'When Does the Use of an Arbitral Secretary Detract from the "Intuitu Personae" Principle?' in Jean Engelmayer Kalicki and Mohamed Abdel Raouf (eds), *The Future of International Arbitration* (Kluwer 2019); Chloe Carswell and Lucy Winnington-Ingram, 'Awards: Challenges Based on Misuse of Tribunal Secretaries' in Emmanuel Gaillard and Gordon E Kaiser (eds), *The Guide to Challenging and Enforcing Arbitration Awards* (Law Business Research 2019); Isabelle Dinkela, 'Reining in the Secretary: The Need to Codify the Role of the Arbitral Secretary' [2019] SchiedsVZ 70; Eliane Fischer and Flavio Peter, 'The Consequences of a Tribunal Secretary's Breach of Duties – the Games of Thrones Edition' (2019) 37 ASA Bull 358; Li Hu, 'The Tribunal Secretary: Is It Impact on the Cost of Arbitration?', *Finances in International Arbitration: Liber Amicorum Patricia Shaughnessy* (Kluwer 2019); Berk Hasan Ozdem, 'Qui est le secrétaire du tribunal arbitral ?' (2019) 68 Annales de la Faculté de Droit d'Istanbul 1.

7 Jörg Risse, 'An Inconvenient Truth: The Complexity Problem and Limits to Justice' (2019) 35 Arb Int'l 291, 299.

as it does to judges of the highest courts around the world.[8] It is not shocking that international arbitrators obtain similar support.

Though the reputation of tribunal secretaries has improved from six years ago, when the challenge to the *Yukos* awards made headlines for the allegedly impermissible involvement of the tribunal's assistant,[9] there is still room for more wide-spread acceptance of the position. As the visibility of the tribunal secretary increased, so did related challenges to arbitrators and arbitral awards.[10] While these attempts have been unsuccessful (and are likely to remain so due to the secrecy of arbitral deliberations),[11] the perceived stigma attached to the appointment of a tribunal secretary – or undisclosed support within the arbitrator's law firm or chambers – is undeniable.

This *status quo* counteracts the original purpose of tribunal secretaries. The only reason why tribunal secretaries should be appointed is to enhance efficiency, increase quality and thus add to the overall attractiveness of international arbitration as a dispute resolution method. But for these goals to

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8 For a comprehensive survey of the role of clerks in European supreme courts, see Consultative Council of European Judges (CCJE), 'Compilation of Replies to the Questionnaire for the Preparation of the CCJE Opinion No. 22 (2019) Entitled "The Role of Court Clerks and Legal Assistants Within the Courts and Their Relationships with Judges"', 14 March 2019, available at <https://rm.coe.int/compilation-all-replies-/16809463ff> (accessed 20 January 2020).

9 The Court of Appeal in The Hague has recently ruled on this challenge, see Gerechtshof Den Haag, *Judgment of 18 February 2020*, Case No. 200.197.079/01. The Court rejected the Russian Federation's assertion that the tribunal had excessively delegated its duties to the tribunal assistant. It held that absent contrary party agreement, whether to make use of a secretary/assistant and in which way is within the procedural discretion of the tribunal. While there are limits to the exercise of this discretion (e.g. delegation of decision-making), the Court did not consider there to be sufficient proof to hold that the tribunal had exceeded these limits. The court did not rule on 'the question how the division of duties between arbitrators and secretaries/assistants should be in general' (at para 6.6.12).

10 Since 2000, challenges related to tribunal secretaries have been brought in *Clement C. Ebokan v Ekwenibe & Sons Trading Company*, Lagos Court of Appeal [2001] 2 NWLR (Pt.696)32; *Total Support Management (Pty) Ltd v Diversified Health Systems (SA)(Pty) Ltd* [2002] ZASCA 14; *Sonatrach v Statoil* [2014] EWHC 875 (Comm); Swiss Federal Tribunal, *Judgment of 21 May 2015* (2015) 33(4) ASA Bull 879; Gerechtshof Den Haag, *Judgment of 18 February 2020*, Case No. 200.197.079/01; Greek Supreme Court, *Judgment of 7 February 2017*, Docket No. 390/2017 (Civil Division A 2); and *Vale v BSG Resources Limited*, LCIA Reference No 142683 (First challenge), Decision Rendered 4 August 2016, available at <http://www.lcia.org/challenge-decision-database.aspx> (accessed 20 January 2020), later to become *P v Q* [2017] EWHC 194 (Comm).

11 On the irregular use of tribunal secretaries and the available remedies, see Fischer and Peter (n 6); Jensen (n 1) chapters 7-9.

succeed, labor must be divided appropriately and in line with the parties' legitimate expectations. To ensure that this goal is met more regularly – and to inoculate arbitrators and their awards against frivolous challenges – the book this article is based on proposes a formal appointment process for tribunal secretaries which culminates in 'Tribunal Secretary Terms of Appointment', detailing the tasks the secretary will carry out.[12]

Where this proposal is followed, the role of the tribunal secretary is clear to all involved. In all other cases, it is suggested that what tasks a tribunal secretary may legitimately carry out depends on the degree to which the parties have been involved in and consented to her or his appointment. Three principal degrees of consent exist: The parties may not be involved at all in the case of undisclosed assistance; the parties may generally consent to the appointment of a tribunal secretary without detailing the secretary's role (*carte blanche* consent); and the parties may agree on specific tasks. This article addresses each of these categories and propose which type of tasks may be carried out under which degree of consent.

The result is a *Traffic Light Scale of Permissible Tribunal Secretary Tasks*. Modelled after the IBA Guidelines on Conflicts of Interest in International Arbitration, the *Traffic Light Scale* assigns specific tasks to the three degrees of transparency and consent under a Green, Orange and Red List. Its purpose is not to promulgate 'yet another guideline' on the permissible use of secretaries, thus adding to the quagmire of secretary regulation.[13] Rather, the idea is to shift the focus from blanket prescription to an approach that is based on the parties' legitimate expectations.

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12 See Jensen (n 1) chapter 4 and Appendices A-C.

13 The list of soft law and institutional regulation of tribunal secretaries has become long: 2004 AAA Code of Ethics for Arbitrators in Commercial Disputes Canons V.C. and VI.B.; 2017 ACICA Guideline on the Use of Tribunal Secretaries; 2018 HKIAC Administered Arbitration Rules art 13.4; 2017 BCDR-AAA art 13; 2019 CAS Code of Sports-related Arbitration art R40.3, R54 and 2013 Guidelines for CAS Arbitrators s 12-14; 2020 FAI Note on the Use of a Secretary; 2019 ICC Note to Parties and Arbitral Tribunals on the Conduct of the Arbitration under the ICC Rules of Arbitration ss 177-92; 2012 JAMS Guidelines for Use of Clerks and Tribunal Secretaries in Arbitrations; 2017 LCIA Notes for Arbitrators ss 68-82; 2015 NAI Arbitration Rules art 19; 2017 SCC Arbitrator's Guidelines s 4; 2016 SIAC Arbitration Rules art and 2015 SIAC Practice Note for Administered Cases – On the Appointment of Administrative Secretaries; 2012 Swiss Rules of International Arbitration art 15(5) and 2014 SCAI Guidelines for Arbitrators s A; 2016 UNCITRAL Notes on Organizing Arbitral Proceedings; 2014 Young ICCA Guide on Arbitral Secretaries.

II. The Green List: tasks for undisclosed assistance

A large number of arbitrators are practicing lawyers in chambers or law firms, many of them partners. These law firms are usually organized in teams in which a partner closely works together with her or his associates, other lawyers and support staff. While the client-attorney relationship is of a personal nature,[14] it is beyond doubt that a partner may rely on her or his team for a multitude of tasks when advising and representing clients. Indeed, nobody would suggest that the choice of a particular counsel implies that that individual must personally review all documentary evidence, draft the entirety of submissions and argue the case by her- or himself: '[T]he choice of a lawyer implies a choice of law firm and of a team.'[15]

When the same individual is appointed as an arbitrator, labor is sometimes divided similarly. In practice, arbitrators frequently retain differing degrees of support from their colleagues and employees, ranging from single research tasks to the drafting of an entire award. Arbitrators also retrieve advice from colleagues who may be more specialized in the subject matter of the dispute than themselves. While single non-complex tasks are regularly delegated to interns or legal trainees, more substantive tasks are carried out by associates or senior colleagues. In those cases, the arbitrator's colleague 'remains a "private" assistant to the concerned arbitrator',[16] and the co-arbitrators usually do not learn of her or his involvement.

It is clear that the appointment of an arbitrator does not imply the same choice of a team as the appointment of counsel does.[17] Undisclosed secretaries should therefore not be charged with eminently personal arbitrator duties. However, it would be unrealistic, inefficient, and unnecessary to prohibit any type of informal support. It would be unrealistic because such informal support is a given when appointing an arbitrator who is at the same time a partner in a

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14 See, eg, Matthias Weller, *Persönliche Leistungen* (Mohr Siebeck 2012) 75.

15 Pierre Tercier, 'The Role of the Secretary to the Arbitral Tribunal' in Lawrence W Newman and Richard D Hill (eds), *Leading Arbitrators' Guide to International Arbitration* (3rd edn, Juris 2014) 538; cf Michael Hwang, 'Musings on International Arbitration' in Michael Hwang, Eunice Chan and Elaine Lim (eds), *Selected Essays on International Arbitration* (Academy Publishing 2013) 15.

16 Tercier (n 15) 550; cf Pierre Lalive, 'Mission et démission des arbitres internationaux' in Marcelo Kohen, Robert Kolb and Djacoba Liva Tehindrazanarivelo (eds), *Perspectives of International Law in the 21st Century: Liber Amicorum Professor Christian Dominicè* (Martinus Nijhoff 2012) 273; Marcel Fontaine, 'L'arbitre et ses collaborateurs' (2013) 2 b-Arbitra 23, 36–37.

17 On the personal nature of the arbitrator's mandate, see Jensen (n 1) paras 5.05-5.48.

large law firm or a similarly sought-after professional.[18] These individuals are exceptionally busy, travel a lot, and do not hide the fact that they have a lot of on-going cases. Accordingly, even arbitral institutions as critical of tribunal secretaries as the ICC acknowledge that 'arbitrators practicing in law firms may, without informing the ICC, use other lawyers in their firms to assist them with their work'.[19]

The formal appointment of tribunal secretaries for the discharge of a single task would also be inefficient. It is well conceivable that an intern is tasked with researching a specific point in law, a legal trainee is tasked with summarizing the procedural history of the case, and an associate proofreads the award. It would be impracticable to formally appoint all of these assistants for only one particular and (comparably) small task, in particular if the individual does not remain with the arbitrator for an extended period of time (eg interns, legal trainees, research assistants). It is in many cases practically impossible to disclose every single person who comes into contact with the file and have them formally appointed.

In fact, disclosure of all these individuals is also unnecessary because the involvement of undisclosed assistance does not automatically result in an impermissible delegation of duties. There are several types of tasks that do not have any impact on the personal nature of the arbitrator's mandate and may thus readily be carried out by informal support. In light of this, the statement that, '[w]here assistance to an arbitrator is not disclosed, the arbitrator is in effect representing that he or she is not receiving any such assistance at all',[20] cannot be supported. There are several tasks that few would expect the arbitrator to carry out personally.

These tasks may be grouped into a Green List, which consists of tasks that do not impact the originality of the arbitrator's decision, either because they pertain to her or his non-essential duties or because they are not fit to influence her or him in any way. As the parties do not have any expectation of personal fulfilment in regard to these non-essential tasks, obtaining the parties' consent is not necessary for delegation and support. Yet, as most of these tasks

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18 Jeffrey Waincymer, *Procedure and Evidence in International Arbitration* (Kluwer 2012) 445.

19 Schwartz (n 4) 86. See also Waincymer (n 18) 445; Zachary Douglas, 'The Secretary of the Arbitral Tribunal' in Bernhard Berger and Michael E Schneider (eds), *Inside the Black Box: How Arbitral Tribunals Operate and Reach Their Decisions* (Juris 2014) 90 ('[W]hat is no longer sustainable is to continue with the mythology about the lone arbitrator who never resorts to any assistance in any circumstances.').

20 Benjamin Hughes, 'The Problem of Undisclosed Assistance to Arbitral Tribunals' in Patricia Shaughnessy and Sherlin Tung (eds), *The Powers and Duties of an Arbitrator: Liber Amicorum Pierre A. Karrer* (Kluwer 2017) 167.

may entail that the secretary becomes privy to confidential information, the arbitrator must ensure that the secretary is included in her or his sphere of confidence or otherwise under a sufficient confidentiality obligation. If that safeguard is in place, Green List tasks may be carried out by undisclosed secretaries or any other type of informal third-party support, such as office secretaries, personal assistants, IT departments, etc.

III. The Orange List: tasks for formally appointed secretaries

Under the rules and guidelines of most arbitral institutions, tribunal secretaries may only be appointed with the consent of the parties. However, only few institutions provide that the parties must consent to the specific tasks the secretary will carry out.[21] Therefore, in practice, tribunal secretaries are often appointed with the parties' general or *carte blanche* consent.

Generally, if the parties provide such *carte blanche* consent, the tribunal may itself determine the scope of the secretary's tasks under its broad procedural discretion.[22] However, it is not entirely free in the exercise of this discretion. Rather, it must comply with the parties' presumptive expectations when agreeing to the secretary's appointment. In determining these expectations, it is decisive what the parties could reasonably infer from the role of a tribunal secretary. Some suggest that this should be the tasks state court clerks carry out at the seat of the arbitration.[23] The transparency necessary for this proposal has recently been created by the Consultative Council of European Judges – and advisory body of the Council of Europe – which has published CCJE Opinion No. 22 on the Role of Judicial Assistants.[24]

Still, there is a decisive difference between state court litigation and arbitration in that parties in arbitration have the right to determine the identity of their adjudicator. This means that state court clerks and tribunal secretaries may not readily be equated.[25] Instead, what is decisive for the determination of

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21 An exception is the LCIA, see 2017 LCIA Notes for Arbitrators s 70(a) ('An Arbitral Tribunal must ensure that a tribunal secretary … only carries out tasks that have been agreed by the parties').

22 Thomas Rüede and Reimer Hadenfeldt, *Schweizerisches Schiedsgerichtsrecht: nach Konkordat und IPRG* (2nd edn, Schulthess 1993) 193–94; Tarkan Göksu, *Schiedsgerichtsbarkeit* (Dike 2014) para 879. See Jensen (n 1) paras 2.88-2.92.

23 Rüede and Hadenfeldt (n 22) 193–94.

24 See Council of Europe, CCJE Opinion No. 22 (2019) on the Role of Judicial Assistants, 7 November 2019, CCJE(2019)6, available at <https://rm.coe.int/opinion-22-ccje-en/168098eecb> (accessed 20 January 2020).

25 For a more detailed comparison between state court clerks and tribunal secretaries, see Jensen (n 1) paras 2.78-2.83.

the parties' legitimate expectations is how tribunal secretaries are commonly used in arbitration practice (*Verkehrssitte*).[26]

Due to the confidential nature of international arbitration, the available tools to determine what is 'common' arbitral practice are limited. They mainly consist of published awards, surveys conducted amongst arbitration practitioners and accounts in arbitral literature. Institutional guidelines and arbitration rules also play an important role. The evaluation of all of these sources cumulatively provides a reliable picture of which tasks are usually carried out by tribunal secretaries and may thus be assigned under '*carte blanche*' consent.

The Orange List thus serves as an indication of what parties must legitimately expect when they consent to the appointment of a secretary, thus lifting the veil of 'obscurity' arguably engulfing tribunal secretaries. At the same time, the formal appointment ensures that the secretary possesses the requisite impartiality and independence, which is necessary when handling tasks that can have at least some bearing on the arbitral tribunal's decision. In addition, the Orange List ensures that parties have formally consented to the participation of a secretary so that they are not surprised or dissatisfied when they get in contact with her or him throughout the proceedings. Importantly, state courts emphasize that the parties' consent (or lack thereof) is also an important factor in assessing the permissible use of tribunal secretaries.[27]

IV. The Red List: tasks requiring the parties' informed and specific consent

Lastly, the Red List covers tasks that directly pertain to or constitute eminently personal parts of the arbitral mandate. They can have a substantial influence on what decision the arbitral tribunal reaches and how it substantiates that decision in its award. The probability that the tribunal secretary becomes a *de facto* arbitrator if he carries out a number of the tasks on the Red List is considerable.

Some might say that such tasks are an absolute taboo, which tribunal secretaries may not carry out under any circumstances. Conversely, it is the

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[26] For an analysis of the arbitrator's contract with regard to eminently personal duties, see ibid 5.38-5.44. Cf Halmstads tingsrätt, *Judgment of 5 December 1983*, Case No T 271/83, unpublished, reported by Patrik Schöldström, *The Arbitrator's Mandate* (Jure 1998) 144 n 81; Rüede and Hadenfeldt (n 22) 193.

[27] See, eg, Total Support Management (Pty) Ltd v Diversified Health Systems (SA)(Pty) Ltd [2002] ZASCA 14, para 41; Swiss Federal Tribunal, *Judgment of 21 May 2015* (2015) 33(4) ASA Bull 879, 885; *P v Q* [2017] EWHC 194 (Comm), paras 50, 66.

proposition of the book on which this article is based that there are no limits to party autonomy in this regard – parties may validly agree to charge secretaries with all tasks contained in the Red List. This makes the entire Red List 'waivable', provided the parties have given their informed and specific consent to the particular task. In addition to these tasks, all tasks on the Orange and Green Lists may be carried out, unless the parties have specifically agreed to the contrary.

One may ask how much autonomy the parties enjoy when determining a secretary's involvement. After all, the parties' procedural agreements find certain limits in the applicable arbitration rules and mandatory provisions of the *lex arbitri*. Can parties really agree to charge tribunal secretaries with any task they wish? To answer that question, we must consider the most extreme case: a party agreement to delegate genuine decision-making functions to a tribunal secretary. While it is unlikely that parties *would* agree to such a delegation in practice, it is important to determine whether they *can* in theory. If they can delegate decision-making functions to a tribunal secretary, they can also – *a maiore ad minus* – delegate all other tasks.

1. Limits in arbitration rules and guidelines

Institutional arbitration rules and soft law guidelines that deal with tribunal secretaries universally prohibit that the secretary participates in substantive decision-making.[28] But are parties bound by those rules? At first glance, the notion that institutional arbitration rules may limit party autonomy is counterintuitive. After all, arbitration rules are but an extension of the parties' agreement which means that they are in principle free to depart from them at any time.[29]

Practically speaking, however, such a departure may not be feasible. Arbitral institutions may decline to administer an arbitration in which the parties have agreed to materially alter central provisions of the institution's rules.[30] Such 'mandatory' provisions are those that reflect 'distinctive features

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[28] 2017 SCC Rules art 24(2); 2017 ACICA Guideline on the Use of Tribunal Secretaries s 12; 2012 JAMS Guidelines for Use of Clerks and Tribunal Secretaries in Arbitrations s 3 sentence 2; 2020 FAI Note s 3.1; 2019 ICC Note s 184; 2017 LCIA Notes for Arbitrators s 68; 2014 Young ICCA Guide art 1(4).

[29] *Marshall v Capitol Holdings Limited* [2006] IEHC 271, para 7.16.2: 'Arbitration rules, by definition, are only binding because the parties have chosen to adopt them and the parties can agree to depart from them as they see fit.'

[30] Yves Derains and Eric A Schwartz, *A Guide to the ICC Rules of Arbitration* (2nd edn, Kluwer 2005) 7–8; Jean-François Poudret and Sebastian Besson, *Comparative Law of International Arbitration* (2nd edn, Sweet & Maxwell 2007) para 96.

of the arbitration procedure of a given institution or aspects that are inseparable from the institution's structure or practice'.[31] For instance, the ICC will reject cases in which parties attempt to alter the provisions on the terms of reference and scrutiny of the award.[32] Which other provisions are considered mandatory differs from institution to institution and is assessed on a case-by-case basis.[33]

This makes it difficult to determine whether arbitral institutions would consider provisions that prevent tribunal secretaries from carrying out substantive tasks as so fundamental that they would decline to administer the arbitration in case of a contrary party agreement. The purpose of the prohibition to entrust secretaries with substantive functions is to ensure that personal arbitrator duties are not delegated without the parties' knowledge. Yet, if the parties expressly agree on such delegation, there is no reason for protection.[34] Moreover, it is unlikely that an institution would define itself by its regulation of tribunal secretaries, as the ICC does regarding its terms of reference and scrutiny of the award. Rules on tribunal secretaries are usually not 'distinctive features' or part of the 'spirit' of an institution.

2. Limits in the *lex arbitri*

Actual limits to the parties' autonomy are contained in the mandatory provisions of the *lex arbitri*. Parties cannot agree on procedural arrangements that infringe upon their core due process rights or are contrary to public policy. More particularly, parties may not agree to dispense with certain minimum standards regarding the arbitrator's impartiality and independence. One ground

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31 Andrea Carlevaris, 'The Bounds of Party Autonomy in Institutional Arbitration' in Andrea Carlevaris and others (eds), *International Arbitration Under Review: Essays in Honour of John Beechey* (ICC 2015) 119. See also Klaus Peter Berger, 'Institutional Arbitration: Harmony, Disharmony and the "Party Autonomy Paradox"' (2018) 34 Arb Int'l 473, 484 who qualifies 'mandatory' arbitration rules as those which the institution considers 'highly relevant for the "spirit" of its rules or the nature and reputation of its administrative services'.

32 Tribunal de Grande Instance de Paris, *Judgment of 22 January 2010* (2010) Rev de l'Arb 571; W Laurence Craig, William W Park and Jan Paulsson, *International Chamber of Commerce Arbitration* (3rd edn, Oceana 2000) 295 n 1; Carlevaris (n 31) 119–20; cf Jason Fry, Simon Greenberg and Francesca Mazza, *The Secretariat's Guide to ICC Arbitration* (ICC 2012) 18.

33 Derains and Schwartz (n 30) 8; Waincymer (n 18) 195.

34 But see Alexander Foerster, 'Stockholmer Regeln (SCC)' in Rolf A Schütze (ed), *Institutionelle Schiedsgerichtsbarkeit: Kommentar* (3rd edn, Heymanns 2018) art 24 para 8 who is of the opinion that the parties are prevented from assigning decision-making functions to the secretary. On the parties' freedom to shape the arbitrator's mandate, see Jensen (n 1) paras 5.10-5.48.

for a lack of impartiality is the arbitrator's prejudgment of the case.[35] From this, some have developed two propositions relevant for the involvement of tribunal secretaries. First, they consider that the prohibition of prejudgment is one of the mandatory minimum standards regarding the arbitrator's impartiality. Second, they believe that the involvement of a third party in arbitral decision-making leads to precisely such prejudgment.[36]

This theory has been described as the 'unity of the adjudicative mission':

> *According to this argument, there is an overriding principle which mandates that, in any jurisdictional process (including arbitration), the adjudicative mission be conferred to a single person or body. In arbitration, that person or body would be the arbitral tribunal.*[37]

Under this theory, all matters of decision-making, both procedural and substantive, must be carried out solely by the arbitral tribunal.[38] The arbitral tribunal as a collegial decision-making body has the mandate to decide the dispute and no other individual may be involved in that mandate. This would prohibit any party agreement granting a third party procedural or substantive decision-making powers.[39]

The main example of such third parties – and the context in which the theory has been developed – are arbitral institutions. To determine whether parties can agree to delegate decision-making functions to tribunal secretaries, their delegation to arbitral institutions therefore provides a starting point.

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35 See *Etat du Qatar v Société Creighton Ltd*, Cour de cassation, 16 March 1999 (1999) Rev de l'Arb 308, 309; William W Park, 'Arbitrator Integrity: The Transient and the Permanent' (2009) 46 San Diego Law Review 629, 635; Waincymer (n 18) 307–08.

36 Peter Schlosser, *Das Recht der internationalen privaten Schiedsgerichtsbarkeit* (2nd edn, Mohr Siebeck 1989) paras 522–26; Antoine Kassis, 'The Questionable Validity of Arbitration and Awards Under the Rules of the International Chamber of Commerce' (1989) 6 J Int'l Arb 79, 89–90; Eric Loquin, 'La sentence arbitrale : L'examen du projet de sentence par l'institution et la sentence au deuxième degré – Réflexions sur la nature et la validité de l'intervention de l'institution arbitrale sur la sentence' [1990] Rev de l'Arb 427, 455; Karl Heinz Schwab and Gerhard Walter, *Schiedsgerichtsbarkeit: Kommentar* (7th edn, CH Beck 2005) para 19.4.

37 Remy Gerbay, *The Functions of Arbitral Institutions* (Kluwer 2016) 163.

38 ibid 164.

39 Antoine Kassis, *Réflexions sur le règlement d'arbitrage de la Chambre de commerce internationale: les déviations de l'arbitrage institutionnel* (Librairie générale de droit et de jurisprudence 1988) 109–10 ('There is a fundamental principle inherent to all justice that jurisdictional authority is unalienable and may not be shared'; author's translation). Cf Loquin (n 36) 457; J Gillis Wetter, 'The Present Status of the International Court of Arbitration of the ICC: An Appraisal' (1990) 11 Am Rev Int'l Arb 91, 104; Thomas Clay, *L'arbitre* (Dalloz 2001) para 1053.

Contrary to what the proponents of the unity of the adjudicative mission allege, it is widely acknowledged that parties are free to delegate various procedural decisions to arbitral institutions.[40] Some arbitration statutes even explicitly provide for such delegation. For instance, Article 2(d) of the UNCITRAL Model Law states that:

> *[W]here a provision of this Law, except article 28, leaves the parties free to determine a certain issue, such freedom includes the right of the parties to authorize a third party, including an institution, to make that determination.*[41]

Indeed, though they are eminently personal parts of the arbitrator's mandate,[42] some arbitral institutions are delegated tasks like determining the seat of the arbitration or the language of the proceedings.[43] Going even further, some institutions are granted the power to decide on interim measures or on the arbitral tribunal's jurisdiction.[44] Thus, today, it is largely undisputed that parties may grant arbitral institutions the power to make certain procedural decisions.

When it comes to substantive decision-making, however, there is more reluctance. One example for the parties' ability to entrust arbitral institutions with more substantive tasks is the scrutiny of the draft award.[45] Arbitral institutions such as the ICC and SIAC review the arbitrators' draft award to ensure that it complies with all formal requirements, that the arbitrators have dealt with all issues put before them, that they have not forgotten a decision on interest or costs, and that the award is not self-contradictory. The purpose of this function is to improve the enforceability, the overall quality, and the

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40 *Société Philipp Brothers v Société Icco*, Cour d'appel de Paris, 6 April 1990 (1990) Rev de l'Arb 880, 883; SFT, *Judgment of 20 February 2009* (2009) 27(3) ASA Bull 568, 571; *Diemaco v Colts Manufacturing*, 11 F.Supp.2d 228, 231–32 (D Conn 1998); *Reeves Brothers Inc v Capital-Mercury Shirt Corp*, 962 F.Supp 408, 411 (SD NY, 1997); *Austern v The Chicago Board Options Exchange, Inc*, 898 F.2d 882, 886 (2nd Cir 1990). See also BGH, *Judgment of 20 January 1994* (1995) BGHZ 125, 7, 13–14 acknowledging that arbitral institutions have a considerable impact on the adjudication of the dispute.

41 See also English Arbitration Act 1996 ss 3(b), 24(2).

42 On the question of which parts of the arbitrator's mandate are eminently personal, see Jensen (n 1) paras 5.49-5.100.

43 Granting the institution the power to determine the seat of the arbitration: 2017 ICC Rules art 18(1); 2012 Swiss Rules 2012 16(1); 2020 WIPO Arbitration Rules art 38(a). Granting the institution the (initial) power to determine the language of proceedings: 2019 CAS Code art R29(1); 2015 CIETAC Arbitration Rules art 81(1); 2014 LCIA Arbitration Rules art 17.2.

44 Granting the institution the power to grant interim measures: 2019 CAS Code art R37(3). Granting the institution the power to determine the existence and validity of an arbitration agreement: CIETAC Arbitration Rules 2015 art 6(1).

45 See, eg, 2017 ICC Rules art 34; 2016 SIAC Rules art 32.3.

persuasiveness of the award. Indeed, several authors report instances in which the scrutiny of the award has prevented grossly wrong or nonsensical awards from being rendered.[46]

At the same time, this purpose implies that the institution's substantive comments sway the arbitral tribunal to change aspects of its decision.[47] Thus, the institution influences substantive decision-making, at least to a degree.[48] While this practice is widely welcomed as a quality safeguard and helpful control mechanism, some commentators and courts have raised doubts about whether parties can entrust this function to a third party such as an arbitral institution. Antoine Kassis has fervently argued that the scrutiny of the award violates the arbitrators' independence and impermissibly encroaches upon arbitral decision-making.[49] He considers that parties cannot validly vest such powers in an arbitral institution as that allegedly violates the mandatory provisions regarding the independence of arbitrators.[50] Similarly, the Turkish Supreme Court has refused enforcement of an award because it considered the requirement of a scrutiny process to be incompatible with Turkish public policy.[51]

Yet, these are isolated and outdated criticisms. Today, the majority of commentators and courts do not consider the parties' agreement to entrust arbitral institutions with scrutiny functions impermissible, even if that entails comments on substance.[52] The parties' interest in a quality award surpasses any policy concerns regarding the arbitrator's impartiality and independence.

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46 Jan Paulsson, 'Vicarious Hypochondria and Institutional Arbitration' (1990) 6 Arb Int'l 226, 230 reports of a case in which the decisive portions of the award had not been properly stapled and thus lost. Jennifer Kirby, 'What Is an Award, Anyway?' (2014) 31 J Int'l Arb 475 reports of a case in which the arbitrators had mentioned a contractual cap on liability in the award's reasoning but nevertheless awarded a sum grossly exceeding that cap in the dispostive section.

47 Craig, Park and Paulsson (n 32) 379.

48 Karl Heinz Schwab, 'Die Schiedsgerichtsbarkeit der internationalen Handelskammer', *Festschrift für Winfried Kralik zum 65. Geburtstag* (Manz 1986) 325; Peter Schlosser, 'Ausländische Schiedssprüche und ordre public „international"' [1991] IPRax 218, 219.

49 Kassis (n 39) 87–91.

50 ibid 92–93. Kassis was not alone with that opinion. See Peter Schlosser, 'Zur sachlichen Unabhängigkeit der Schiedsgerichte' in Klemens Pleyer, Dietrich Schultz and Erich Schwinge (eds), *Festschrift für Rudolf Reinhardt* (Otto Schmidt 1972) 324–25; Mauro Rubino-Sammartano, 'The Keban Arbitration' (1980) 46 Arb 241, 246; Wetter (n 39) 104–05.

51 *La Compagnie de Constructions Internationales, La Compagnie Française d'Enterprise et la Société Impregilo v DSI* (1980) 46 Arbitration 241, 242 (Turkish Supreme Court 1976). The Court has not provided any reasoning as to why the scrutiny process violates public policy, but simply stated that it is irreconcilable with Turkish procedural law.

52 *Bank Mellat v GAA Development and Construction Co* [1988] 2 Lloyd's Rep 44, 48; *Société Cubic Defense Systems Inc v Chambre de commerce internationale*, Cour de cassation,

From a more general perspective, none of the authors that advocate the unity of the adjudicative mission adequately addresses its dogmatic foundations. The myth of an 'overriding principle' requiring that any adjudicative mission be conferred to a single person or body is quickly debunked. There are many instances of state courts and other dispute resolution bodies that allow the resolution of the dispute to be in part taken over by non-members of the adjudicatory body.[53] The same is true for the arbitral process, in which state courts may assist the tribunal in the taking of evidence.[54] Even if the participation of a third party led to a prejudgment of the case by the arbitrator, parties may validly dispense with the requirement that the arbitrator has not prejudged the case. That is, for instance, indicated by the fact that the '[r]elationship of the arbitrator to the dispute' is on the Waivable Red List of the IBA Guidelines.[55] The theory of a unity of the adjudicative mission must thus be rejected.[56]

That parties must be allowed to grant secretaries decision-making powers also follows from the conceptual foundations of the arbitrator's mandate. The entire reason the arbitrator's mission is personal and may not be delegated is that the parties have chosen their arbitrators *intuitu personae*.[57] Hence, it is the parties' choice of the particular arbitrator from which the personal nature of her or his mandate originates and that thus limits secretaries' scope of duties. As any party agreement may be amended by the parties themselves, the same must be true for shaping the arbitrator's mandate. If the parties agree that they want a secretary with decision-making powers, they may specify their expectations regarding the degree of personal fulfilment by the arbitrators accordingly. The secretary's legitimacy thus begins and ends with the parties' agreement. As the parties could simply appoint the secretary as an arbitrator, there is nothing that speaks against an appointment as tribunal secretary with certain arbitrator

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20 February 2001 (2001) Rev de l'Arb 511, 512–13; SFT, *Judgment of 16 July 1990*, unpublished, reported by Craig, Park and Paulsson (n 32) 381 (with references to further cases on point).

53 On this point, see Gerbay (n 37) 171. On the practice of state courts to delegate eminently personal parts of the adjudicatory mandate to clerks, see Jensen (n 1) paras 2.78-2.83.

54 Model Law art 27.

55 IBA Guidelines 2014 s 2.1. See also Jan Heiner Nedden and Johanna Büstgens, 'Die Beratung des Schiedsgerichts – Konfliktpotential und Lösungswege' [2015] SchiedsVZ 169, 177; Hans Jakob Maier, *Handbuch der Schiedsgerichtsbarkeit* (Neue Wirtschafts-Briefe 1979) para 381.

56 Gerbay (n 37) 168, 172; Nedden and Büstgens (n 56) 176 ('A general principle that the arbitral tribunal's decision must be free of any external influence does not exist'; author's translation).

57 Jensen (n 1) paras 5.10-5.48.

functions – *a maiore ad minus*.[58] If parties provide their informed and specific consent, there is no limit to which tasks a tribunal secretary may carry out for the arbitral tribunal.[59]

V. Result: 'Traffic Light Scale of Permissible Tribunal Secretary Tasks'

How specific tasks should be assigned to the three Lists thus developed is not self-evident. Such a classification requires choices with respect to which reasonable minds can differ. The book approaches this exercise by conducting an evaluation of the existent scholarship, surveys, and guidelines as well as a legal analysis of the eminently personal nature of the arbitrator's mandate, spanning more than 100 pages.[60] Rather than offering an additional suggestion as to the proper use of secretaries, the *Traffic Light Scale* is thus concerned with consolidating the existing approaches. It is hoped that this approach allows the *Traffic Light Scale* to serve its purpose as a reference tool for anyone in need of clarification on what to expect from arbitrators and their secretaries.

The *Traffic Light Scale* is available as an Appendix to this article and at <https://bit.ly/2viKsRv>.

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58 As Paulsson (n 46) 231 states in the context of the scrutiny of the award: 'There is no apparent reason why parties ... could not accept that there should be a division of tasks. In other words, even if one were to admit that the ICC Court overrules arbitrators' decisions on points of substance ... there seems to be no fundamental concept of justice that would deny the legitimacy of such a process'. This also seems to be the prevalent view in Switzerland with regard to tribunal secretaries, see Swiss Federal Tribunal, *Judgment of 21 May 2015* (2015) 33(4) ASA Bull 879, 885; Göksu (n 22) para 879.

59 An important caveat to this result exists in jurisdictions like The Netherlands, Belgium and Italy. The arbitration laws of these jurisdictions provide for the rule that an arbitral tribunal must consist of an uneven number of arbitrators. This rule is considered mandatory. Though its purpose to prevent deadlocks and compromises in decision-making would not be compromised by the endowment of a tribunal secretary with arbitrator functions (unless the secretary received a formal vote), an award in which parties have agreed to endow a secretary with such tasks could be set aside. For a detailed analysis, see Jensen (n 1) paras 8.29-8.34.

60 ibid chapter 5. That chapter also serves as a commentary on tribunal secretary tasks, addressing the details, risks, and benefits of each particular task.

APPENDIX

Traffic Light Scale of Permissible Tribunal Secretary Tasks

The Traffic Light Scale of Permissible Tribunal Secretary Tasks is intended to assist parties, arbitrators, secretaries, state courts, and policy makers in determining how tribunal secretaries may best be employed. It classifies tasks that an arbitrator may potentially delegate to or receive support in by tribunal secretaries into three categories: the Green List, the Orange List, and the Red List. The tasks contained in each of these Lists are 'unlocked' by different degrees of party consent regarding the secretary's role.

1. The Green List

The following tasks may be carried out by undisclosed tribunal secretaries. This includes the arbitrator's colleagues and employees as well as other informal support, such as office secretaries, personal assistants, etc, provided they are under a sufficient confidentiality obligation. The parties' consent is not required.

1.1. Logistical support
1.1.1. Organizing oral hearings and other meetings
1.1.2. Coordinating travel and lodging for the tribunal and its third-party support
1.1.3. Providing specialized administrative support
1.1.4. Coordinating external administrative support
1.1.5. Creating and maintaining a procedural calendar for the arbitration
1.2. Routine correspondence
1.2.1. Internally preparing the tribunal's correspondence with the parties
1.2.2. Corresponding on behalf of the arbitral tribunal
1.2.2.1. with the arbitral institution, where institution does not require formal appointment
1.2.2.2. with the tribunal's third-party support
1.2.3. Assisting with communication within the arbitral tribunal
1.3. Case file and data security
1.3.1. Organizing and maintaining a physical case file
1.3.2. Handling an electronic case file for the tribunal
1.3.3. Setting up cybersecurity for the tribunal
1.4. Financial management
1.4.1. Handling the financial management of the case for the tribunal, without contact with the parties
1.4.2. Keeping time sheets for the tribunal
1.5. Procedural management
1.5.1. Reminding the tribunal of approaching deadlines of party submissions
1.5.2. Drafting purely administrative procedural orders and decisions

1.5.3.	Typing and proofreading procedural orders (eg checking grammar, spelling, citations and cross-references)
1.6.	Party submissions
1.6.1.	Reading the parties' written submissions as a preparation for other tasks
1.6.2.	Summarizing the parties' written submissions provided the tribunal acquires an intimate knowledge of the case file itself before using the summary
1.6.3.	Proofreading transcripts of oral hearings
1.6.4.	Proofreading translations of documents
1.7.	Factual circumstances of the case
1.7.1.	Summarizing evidence provided the tribunal acquires an intimate knowledge of that evidence before using the summary
1.7.2.	Locating documents from the case file after specific instructions by the tribunal and with the tribunal's full knowledge of the case file
1.8.	Applicable law(s)
1.8.1.	Verifying that authorities the parties have submitted are up to date
1.8.2.	Procuring copies of authorities the parties have cited but not submitted
1.8.3.	Summarizing the parties' legal positions provided the tribunal acquires an intimate knowledge of those positions before using the summary
1.8.4.	Researching singular legal questions, detached from specific facts of the case
1.9.	Arbitral decision-making
1.9.1.	Being present at deliberations for the purpose of subsequently drafting (parts of) the tribunal's decision(s)
1.9.2.	Taking minutes of deliberations as a basis for the chairperson's first draft of the award
1.10.	Recording the decision
1.10.1.	Drafting the award
1.10.1.1.	Front page
1.10.1.2.	Preliminary matters of the award
1.10.1.3.	Procedural history to the extent that it does not contain reasoning for procedural decisions
1.10.2.	Scrutinizing the formal aspects of the award, including clerical errors, cross-references, cite checking, stylistic comments as to language, etc
1.11.	Issuances of the award
1.11.1.	Physical production of the award, procuring all arbitrators' signatures of the award, and ensuring that the requisite amount of copies is made

1.11.2. Delivery and notification of the award to the parties
1.12. Post-award duties
1.12.1. Registration of the award with the competent courts
1.12.2. Archival duties
1.12.3. Preparing the award for publication (where applicable)

2. The Orange List

In addition to the tasks contained in the Green List, the following tasks may be carried out by tribunal secretaries who have been formally appointed.

2.1. Routine correspondence
Corresponding on behalf of the tribunal in the secretary's own name
2.1.1. with the parties
2.1.2. with the arbitral institution, where institution requires formal appointment
2.2. Financial management
Invoicing the parties and requesting their advances on cost
2.3. Procedural management
2.3.1. Attending case management conferences and other procedural meetings
2.3.2. Reminding parties of approaching deadlines for their submissions
2.3.3. Preparing procedural orders and decisions upon instruction, supervision and verification of the tribunal
2.3.4. Communicating procedural decisions to the parties
2.4. Party submissions
2.4.1. Summarizing the parties' written submissions if the arbitral tribunal uses those summaries to acquire its initial familiarity with the case file
2.4.2. Attending the oral hearing
2.4.3. Supporting the tribunal during the oral hearing (eg time keeping, locating documents, etc)
2.4.4. Drawing up minutes of the oral hearing
2.5. Factual circumstances of the case
2.5.1. Supporting the tribunal in the examination of witnesses and experts without actively participating in the examination
2.5.2. Supporting the tribunal at site visits
2.5.3. Summarizing evidence if the tribunal uses those summaries to acquire its initial familiarity with the factual circumstances of the case
2.5.4. Carrying out factual research on documents in the case file based on the tribunal's specific instructions and subsequent verification
2.5.5. Drafting a tribunal-appointed expert's terms of reference based on the tribunal's specific instructions and subsequent verification
2.5.6. Translating documents and providing interpretation assistance (where the secretary possesses particular language capacities)

2.6. Applicable law(s)
Advising the tribunal of which legal sources the secretary considers particularly relevant once the tribunal has personally reviewed and decided on the relevance of all legal sources submitted
2.7. Arbitral decision-making Supporting the tribunal in deliberations
2.7.1. Identifying needed documents from the case file
2.7.2. Taking notes on the decisions reached
2.8. Recording the decision
2.8.1. Drafting the award
2.8.1.1. Summary of facts, where the tribunal is sufficiently familiar with them
2.8.1.2. Summary of parties' positions, where the tribunal is sufficiently familiar with them
2.8.1.3. Reasoning of the tribunal's procedural and substantive decisions, where the tribunal has strictly instructed and supervised the secretary before closely verifying the work product
2.8.2. Scrutinizing the substantive aspects of the award, including limited comments on substance
2.9. Issuance of the award
Translation of the award from tribunal's working language to the language of the arbitration

3. The Red List

Before a tribunal secretary may carry out any of the following tasks, the tribunal must explain the task to the parties and obtain their specific consent.

3.1. Correspondence
Acting as an 'interface' between the parties and tribunal, autonomously liaising with parties, and responding to their enquiries
3.2. Procedural management
3.2.1. Making procedural decisions
3.2.2. Setting and extending procedural deadlines
3.2.3. Drafting substantive procedural decisions without the tribunal's instruction, supervision and verification
3.3. Party submissions
3.3.1. Discussing the merit of the parties' written submissions with the tribunal
3.3.2. Reviewing the parties' written submissions instead of the tribunal and providing a list of crucial issues or summaries
3.3.3. (Co-)moderating the oral hearing, asking questions to the parties
3.4. Factual circumstances of the case
3.4.1. Taking of evidence
3.4.1.1. Examining witnesses and experts
3.4.1.2. Conducting site visits on behalf of the tribunal

3.4.1.3.	Acting as document production master
3.4.2.	Evaluation of evidence
3.4.2.1.	Summarizing evidence without the tribunal's knowledge of the evidence
3.4.2.2.	Carrying out factual research on documents in the case file without the tribunal's knowledge of the case file
3.4.2.3.	Evaluating whether the evidence proves the alleged claims and flagging any conflicts of evidence
3.4.3.	Contribution of evidence
3.4.3.1.	Researching factual questions outside the case file
3.4.3.2.	Informally advising the tribunal on the technical specificities of the case
3.4.3.3.	Deciding whether the tribunal should appoint an expert
3.4.3.4.	Instructing any tribunal-appointed expert
3.5.	Applicable law(s)
3.5.1.	Deciding which legal sources in the case file are relevant without the tribunal having personally reviewed all sources
3.5.2.	Analysing the parties' legal submissions
3.5.3.	Researching all legal issues that arise under the facts of the case (in – and outside the case file) and providing 'legal opinions'
3.5.4.	Advising the tribunal on the applicable law(s)
3.6.	Arbitral decision-making
3.6.1.	Independently preparing documents detailing the subject of deliberations (eg tribunal working paper)
3.6.2.	Actively participating in deliberations by voicing own opinion
3.6.3.	Providing a 'sounding board' for the arbitrator
3.6.4.	Casting an advisory vote
3.6.5.	Issuing concurring or dissenting opinions
3.7.	Recording the decision
3.7.1.	Drafting the dispositive part of the award
3.7.2.	Drafting the reasoning of the tribunal's procedural and substantive decisions, without the arbitrator's prior instruction, concurrent supervision and subsequent verification
3.8.	Facilitating settlement between the parties

J. Ole JENSEN, *Aligning Arbitrator Assistance with the Parties' Legitimate Expectations: Proposal of a 'Traffic Light Scale of Permissible Tribunal Secretary Tasks'*

Summary

Regulations on tribunal secretaries abound in international arbitration. Rather than providing clear guidance, the result is more discussion on the secretary's appropriate use. The article presents a new approach developed in the author's doctoral thesis. Instead of focusing on inflexible prescription, the article argues that the parties' legitimate expectations are decisive.

Ideally, arbitrators would discuss these expectations with the parties and agree on a precise role in 'Tribunal Secretary Terms of Appointment'. In all other cases, the secretary's appropriate role depends on the degree of consent the parties have provided. While the role of undisclosed assistance is limited to clerical support, formally appointed tribunal secretaries may carry out 'common' secretary tasks. To charge secretaries with a more substantive role, the parties' informed consent is required. These three types of tasks are classified in Green, Orange and Red Lists, making up the 'Traffic Light Scale of Permissible Tribunal Secretary Tasks'.

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Aims & Scope
Switzerland is generally regarded as one of the World's leading place for arbitration proceedings. The membership of the Swiss Arbitration Association (ASA) is graced by many of the world's best-known arbitration practitioners. The Statistical Report of the International Chamber of Commerce (ICC) has repeatedly ranked Switzerland first for place of arbitration, origin of arbitrators and applicable law.

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