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THIRTEENTH ANNUAL CHARLES N. BROWER LECTURE

This year's Charles N. Brower Lecture was given on April 15, 2025 at 5:00 p.m. by Claudia Salomon.

Lecture by Claudia Salomon

Today I want to explore how a city can become a preferred arbitral seat. The competition is tough. Everywhere we turn, there is a flurry of new arbitral institutions or hearing centers or announcements of new arbitration laws. It is all part of a bigger effort to become the next global arbitration hub in what has become an epic battle of the seats. It can be as ferocious as "Survivor" or "American Ninja Warrior," but with lawyers.

And this battle has good reason. As always, follow the money. Arbitration contributes significantly to a city's economy in multiple ways. It generates work for legal counsel, expert witnesses, and providers of support services such as transcription, translation, and interpretation. Arbitration proceedings generate spending at hotels, transportation, restaurants, and retail. And arbitration indirectly raises the profile and reputation of the city, particularly with businesses internationally.

Back in 2012, the first economic impact study of arbitration in Toronto estimated a $250 million boost to the local economy, according to Charles River Associates, and some commentators say the impact on New York City's economy from hosting international arbitration exceeds a billion dollars. The benefits are real.

How does a city transform itself into more than just a safe seat, but also a preferred seat? First, a quick refresher on why the seat of an arbitration matters. And I will use the term "seat" and "place" interchangeably.

The seat is a legal concept referring to the jurisdiction in which the arbitration is deemed to take place, and it has important consequences. The seat determines the law governing an arbitration's procedure, which is referred to as the *lex arbitri*. An arbitration's procedure is mostly fixed by party agreement, including the agreement to use particular arbitral rules. But the *lex arbitri* can play an important gap-filling role in deciding procedural issues on which the parties have not reached agreement.

Many jurisdictions impose mandatory requirements on arbitration seated within that jurisdiction, and those rules cannot be waived. Courts of the seat also have sole jurisdiction to hear applications to annul the award or set aside the award. Courts of other jurisdictions may refuse to enforce an award, but they do not have the authority to vacate the award. The seat, therefore, also determines the grounds on which awards can be annulled, because standards and procedures for challenging arbitral awards differ between jurisdiction. The seats can have significant impact on whether a challenge is successful.

And that is not all. Arbitral tribunals and courts will usually determine the arbitrability of a dispute on the basis of the law of the seat, and what is more, the choice of seat determines which court has the power to grant interim relief, assist with the taking of evidence, and secure the participation of witnesses in the arbitration and the production of documents.

In many arbitration cases, the seat and the physical place of an oral hearing are the same, but parties may designate one place as the seat and hold hearings in a different place for convenience.

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Let us next look at the concept of a preferred seat. The most recent Queen Mary study, released last week, found the top five preferred seats are London, Singapore, Hong Kong, Beijing, and Paris. But I do not believe this survey of preferences really tells us much about the most selected cities and why they are preferred.

This brings to mind an altogether different kind of seat selection, the process my husband and I went through to buy chairs for our house. My husband has very long legs. Initially, we each had different seat preferences, but eventually, we chose something that worked for both of us.

Now, in the Queen Mary study, this set of preferences is more about what respondents might want but not necessarily what would be selected in a negotiated process when parties are choosing a legal or neutral seat. At the International Chamber of Commerce (ICC) Court, the top five seats in 2023 were Paris, London, Geneva, New York, and Singapore. The *Global Arbitration Review* (GAR) 100 data report provides very interesting information about the seats actually selected in their GAR 100 submissions. Over the last ten years, London has been the most popular seat, followed by Singapore and then Paris, Hong Kong, and Dubai. The data also shows that international arbitration is indeed very international. The single most important seat selected is "other," a catch-all term for about 300 seats in the data.

Now, to consider how a city can become a preferred seat, it is important to distinguish between three types of arbitration. First, domestic arbitration, where all of the parties are from the same jurisdiction, and they have opted for arbitration as a dispute resolution mechanism rather than their own courts.

Second, an international contract involving parties from different countries, but the arbitration is seated in the same country as one of the parties. This means that the parties have not chosen a neutral seat, but instead, one of the parties had the bargaining power to insist on arbitration seated in their country. We often see this in contracts involving states and state entities, which often insist on local governing law and a local seat. The law may in fact mandate this, or quite frankly, the state has the bargaining power.

And in the third category are international contracts, but the parties have selected a seat in a neutral location, and that is not the jurisdiction of either party. If a city is striving to be in this third category, selected as a neutral seat, it does not need to be in categories one or two, and it does not need a strong domestic arbitration culture or have the bargaining power to insist on arbitration in its own jurisdiction.

Let me be very clear. A strong domestic arbitration culture is not a precondition for a city becoming a preferred arbitral hub. Look at Brazil. It has a strong domestic arbitration culture, but we do not see very many international arbitrations seated in São Paulo or other Brazilian cities that have nothing to do with Brazil. On the flip side, the most preferred arbitral hubs do not have a strong domestic arbitration culture.

Arbitration is not typically used for purely domestic arbitration in the UK or France, and yet London and Paris are the most preferred arbitral seats in ICC arbitration, and they are among the top five seats overall in the Queen Mary study and other rankings.

At the ICC Court, we have many more cases seated in London than we have UK parties using ICC arbitration. This means that for the most part, when London is selected as a seat, none of the parties to the contract are from the UK.

Here are some numbers to illustrate this point. In 2023, cities in France were selected as the place of arbitration in ninety-nine cases, but there were only sixty-nine French parties in ICC arbitration. Even if we assume that Paris was selected as a seat in all cases involving French parties, this means that Paris was selected as a seat in thirty cases in which there were no French parties involved.

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For the UK, the comparison is even starker. In 2023, London was selected as a seat in eighty-five cases, but there were only forty-seven UK parties. This is also the case for arbitration seated in more preferred seats involving New York, Geneva or Zurich, and Singapore, cities in which neither party is from the seat and because neither party is from the seat.

For the rest of the world, the number of parties from any jurisdiction far exceeds the number of cases seated in that jurisdiction. Take Mexico, there were 111 Mexican parties in ICC arbitrations, but only nineteen cases seated in Mexico.

In Spain, we had 104 Spanish parties, but only eighteen cases seated in Spanish cities. This means that most of the cases involving Mexican or Spanish parties were seated in their counterpart's jurisdiction because the party had the bargaining power or the cases were seated in a neutral city where neither party had a connection.

ICC arbitrations were seated in more than 100 cities, but the top ten with London and Paris leading the pack account for more than 60 percent of the cases. More than half of the cases at the ICC court in recent years were seated in the same jurisdiction as one of the parties, and I actually found this data quite surprising because we are always thinking about the seat as a neutral selection.

For many places that have improved their arbitration ecosystem to a certain extent, foreign investors are more comfortable and therefore willing to accept arbitration seated in the same jurisdiction as their counterparty when dealing with a state or state entity. Yet very few cities are considered truly neutral seats, selected when there is no connection to any of the parties.

What makes a good seat? The latest Queen Mary study found that the factors influencing seat preference were consistent with those cited by respondents in previous surveys. These include the support for arbitration by local courts, neutrality and impartiality of the local legal system and national arbitration law, and a strong enforcement track record.

In 2021, greater support for arbitration by local courts and the judiciary was the number one adaptation that would make other arbitral seats more attractive. This was followed by neutrality and impartiality of the local legal system.

Now, we have seen a variety of efforts aimed at identifying safe seats and have helped states amend their laws and develop the legal and logistical infrastructure that really matters. To mark the 100th anniversary in 2015, the Chartered Institute of Arbitrators designated ten principles for an effective and efficient seat in international arbitration focused on identifying the key characteristics that make a particular place an appropriate and effective location for international arbitration. These are known as the London Principles and require arbitration-friendly laws, efficient courts with limited court intervention, and logistical support and ethical standards.

Then in 2018, the GAR-CIArb Seat Index was created to help users identify safe and effective seats based on the CIArb London Principles. The goal was to create a system in which the seats were judged on several key features and not simply popularity. Six jurisdictions were selected: Hong Kong, London, New York, Paris, Singapore, and Switzerland with Geneva and Zurich in the same category. And all of the jurisdictions adhere to the London Principles with little meaningful distinction between them.

Then Delos also created a list of so-called "safe seats," which it described as places of arbitration where the legal framework and practice of the courts support recourse to arbitration as a fair, just, and cost-effective, binding dispute resolution mechanism.

A seat may be considered Delos-safe even if it does not have all of the hallmarks of today's most popular arbitration seats. Now more than forty cities are considered safe seats, and approximately a dozen more are emerging safe seats. However, they do not include a single city in Latin America outside of Brazil, and no city in Africa is named other than Port Louis in Mauritius. We do not have information to assess whether a determination has been made that the

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other cities not on the list are in fact not safe according to these criteria or if these other jurisdictions have not yet been analyzed.

What we do know is this. More than 170 countries have signed the New York Convention. More than 120 jurisdictions have adopted arbitration laws based on the UNCITRAL Model Law on international commercial arbitration, and yet legal infrastructure is not enough. with respect to the safe seats, in fact, only Singapore incorporates the model law. The arbitration laws applicable in Switzerland, the UK, New York, and Paris have similar principles but do not incorporate the Model Law. What this suggests is that being recognized as a safe seat and a preferred seat requires more than adopting modern international arbitration legislation, and moving from being considered a safe seat to a selected neutral seat requires even more.

At the end of last year, Karim Youssef coined the phrase "international hub formation" in an excellent speech he gave at Sharm El Sheikh discussing how to transform Middle Eastern and North African seats into global arbitration hubs. He rightly called this a complex process "arguing that arbitration hubs are not born but made," and his key rules for aspiring hubs include the importance of being established business centers, surpassing the baseline of the New York Convention in its approach to enforcement in developing an arbitration hub culture.

Why is Singapore such a popular seat? We can learn a lot from the rise of Singapore as both a regional and global arbitration hub in such a short period of time. Singapore benefits from its strategic global location at the crossroads of major economies and transportation routes making it a convenient meeting point for parties from diverse jurisdictions, yet geography is only one essential element. Singapore has taken a comprehensive and long-term approach to becoming an arbitration hub. It meticulously refined its legal ecosystem. International arbitration is part of its overall economic growth strategy with a stable legal environment and robust legal system. The Singapore courts are known for their steadfast support of international arbitration and their tendency for upholding the integrity of arbitration agreements made by the parties.

The judiciary has consistently adopted pro-arbitration stance since the introduction of its Arbitration Act, thirty years ago in 1994. The courts regularly uphold the enforceability of arbitral agreements and rarely set aside arbitral awards. Singapore is the ultimate success story.

What about the cities that have failed to make the grade? I think there are five key reasons why some cities fall behind. The first is thinking, if you build it, they will come. We see initiatives everywhere to build hearing centers or open an arbitral institution with the hope that this would be enough for parties to select the city as a seat. This is underway in Chicago, although currently, there is very little arbitration actively there.

Other cities are doing the same, but without the appropriate legal infrastructure to support arbitration, the appeal of the city as a neutral seat will be limited. And there is a proliferation of arbitral institutions around the world, many with only a handful of cases.

Careful planning and a comprehensive approach are needed to become an appealing neutral seat. A nicely decorated conference room or new arbitral institution is not enough. There needs to be a well-developed body of commercial law used widely in business contracts, adequate funding for the center to survive its initial years, and widespread legal, academic, and judicial support.

The second cause of failure is short-term thinking, and I recall a conversation with a lawyer in Japan who said the country had failed in its effort to promote arbitration, and he had reached this conclusion because a hearing center in Japan had been open for only two years but had few bookings. This kind of short-term thinking does not work with international arbitration.

As the president of the ICC Court, my job is a lot like the director of an arboretum. A director plants trees but never sees the tree reach maturity, and in a similar way, what I see happening now in ICC arbitration was put in place by my predecessor and my predecessor's predecessor, who I know is here in the audience.

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Only about 20 percent of ICC cases arose from contracts signed in the last two years, and half of the cases arise from contracts signed in the last five to ten years. This means that everything I have been speaking about reflects decisions about the seat of arbitration made many, many years ago. Singapore is one jurisdiction that has had a long-term comprehensive strategy, and we see how that careful planning is paying off.

The third reason for failure is geography, or location, location, location. Sydney has learned the hard way that location is critical. The city tried to position itself as a preferred seat for Asia, and despite extensive marketing campaigns to attract arbitrators, it is just too far away. A direct flight from Delhi to Sydney is nearly thirteen hours but half the time to get to Singapore. A direct flight from Seoul to Sydney is more than ten hours but just six to Singapore. And what we see happening is that arbitrations seated in Australia have at least one Australian party who has the bargaining power to insist on a city in Australia rather than a neutral seat.

The fourth reason for failure is geography plus the lack of direct flights. Geopolitics is not the only factor inhibiting the chance of a city's success as a preferred seat, even when geography is on its side. Mauritius, for example, made a big push to be a preferred seat for African- and Indian-related disputes, and with favored tax treaties, the island nation became a tax haven for companies investing in Africa and India. It would have seemed logical that Mauritius could then evolve into a trusted seat for Africa- or India-related disputes. After all, it is the only so-called "safe seat" for international arbitration in the African continent according to the Delos Guide.

Mauritius, however, is a prime example of how the legal formalities are not enough. It turns out that there are very few direct flights to Mauritius from the African continent, and those flights are expensive. It is a beautiful island and a fabulous place to go for holiday, and as the crow flies, Mauritius is closer than London or Paris. But logistically, it is not at all convenient.

The fifth source of failure is geopolitics. Even if a location is on your side, geopolitics can still get in the way. The Philippines is much closer to Hong Kong than Singapore, but Filipino parties now prefer Singapore because of geopolitics. By the same token, can we expect a diminished role of New York or other U.S. seats in the near future? This might happen if travel to the United States becomes more difficult due to shifting visa requirements or uncertainty about entering the country, even if entry is completely authorized.

Fewer international students may want to study in the United States, which could mean fewer international students obtaining LLMs and taking the New York Bar and therefore being familiar and comfortable with New York law. Time will tell.

Related to geopolitics is regional stability. The Rwandan capital, Kigali, has made significant strides recently to become an arbitration center, and travel there is relatively easy. But if tensions between Rwanda and the Democratic Republic of Congo escalate, parties may start looking elsewhere for a reliable and secure seat.

Now, geography is not the only reason why certain cities have failed to take off as preferred seats. Preferences have been shifting due to new capital flows. At the ICC Court, as I mentioned, Paris and London remain number one and number two, but they are getting a smaller slice of the pie. In other words, the percentage of cases overall that select Paris or London has declined over the last ten years, as Singapore and other cities have emerged as viable alternatives.

While capital previously flowed primarily west to east and north to south, today we see an increase in inter-regional agreements within Asia, and with this change, parties in Asia and the Middle East have greater bargaining power. Nearly 60 percent of Asia's trade is now conducted with regional trade partners, up from 53 percent in 2000, and it is expected to grow to 65 percent by 2030. This new flow of capital could mean that while London and Paris continue to score high on the key principles needed for a successful arbitration hub, if the parties to a contract are from Asia or the Middle East, they might look closer to home for a trusted seat rather than Europe. No

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city, therefore, can rest on its laurels or assume they will continue to be a preferred seat as the global economy and commerce evolves.

With this landscape and background in mind, how can a city go from a wannabe to where to be? I see real opportunity for a city or even cities in Africa or Latin America to rise as a preferred neutral hub for intra-regional disputes. Regional trade is increasing in Africa following the ratification of the African Continental Free Trade Agreement, which is expected to boost intra-African trade by 53 percent this year. A city in Africa could become the go-to place for arbitration involving all African parties, even when none of the parties are from that jurisdiction.

The same is true for a city in Latin America, given that there is no city in the region today that stands out as a seat for intra-regional disputes. Of course, we see arbitration seated in Latin America, but in almost all circumstances, those cases involve a party or all parties from that jurisdiction. Parties in a few cases have selected Santiago, Chile, as a seat, even though the cases do not involve any parties from Chile. One question on my mind is whether parties will continue to select New York or Miami or cities in Europe, such as Paris, Madrid, or London, in cases concerning intra-regional disputes in Latin America.

I also see an opportunity for civil law jurisdictions in Asia and elsewhere. Singapore is the clear preferred seat for Asia-related disputes, but will there be other jurisdictions, particularly a civil law jurisdiction that can promote itself as a viable alternative? The city would require a long-term comprehensive strategy around its courts to make the benefit readily apparent. More generally, we know there is a close relationship between the selection of a seat and the selection of the applicable governing law. Singapore law has consistently been the dominant choice for governing law in SIAC in Singapore. English law accounts for approximately 80 percent of cases at the LCIA. Hong Kong law has consistently remained the most popular law in HKIAC, and Dubai and UAE laws have historically been the most frequently selected at DIAC.

At the ICC court last year, the seat and governing law matched in 56 percent of the cases. Is there any civil law—French, Spanish, German, Swiss—that would become more frequently adopted as a neutral law, especially when all of the parties come from a civil law jurisdiction? Are parties choosing English law, New York law, and increasingly Singapore law because the lawyers handling the transaction are from those jurisdictions? Are parties choosing those laws because the lawyers handling the transaction received law degrees, such as LLMs, from those jurisdictions and were admitted to the New York Bar or as an English solicitor? And are those laws viewed as favorable or merely familiar? Many questions, indeed, which I think would make great PhD research topics.

In the same way that LLM programs in the United States have enabled lawyers to take the New York Bar, it may be that the master's programs in other jurisdictions could be an important element to the promotion of the governing law. The UK definitely understands the importance to the economy of English law in international contracts that have nothing to do with the United Kingdom. The Minister of Justice actively promotes English law around the world. Other jurisdictions may wish to engage in similar promotion of its governing laws.

As in any competitive field, success depends in part on your unique selling points. It may be global reach or the extent of local knowledge, a particular expertise or a sterling reputation for client service. However, trying to replicate what other longstanding hubs have to offer rather than considering the jurisdictions unique selling points is a likely recipe for failure.

To be sure, consider the best practices of other successful jurisdictions, but also develop and promote your unique strengths. One example in this regard is China. The Chinese are addressing some of the country's challenges of becoming a hub by implementing a verification mechanism that requires the Supreme People's Court to make a final decision on any proposition of non-enforcement by a lower court.

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Even if the formalities of the legal ecosystem are in line with international standards, think about what are the procedural hurdles in your jurisdiction. Are there ways to minimize delay in multiple layers of appeals, not only for setting aside proceedings, but also for interim relief? What mechanism should be adopted to create more certainty and predictability? A jurisdiction such as India and especially Delhi have come a long way over the last few years to become an arbitration-friendly seat. But some decisions that were not in line with international standards cause even the most ardent supporters of India to suggest Singapore as a seat instead.

Specialized commercial courts with specific jurisdiction over international arbitration challenges can be established. It can also facilitate sharing best practices, cross-border training, and education on arbitration for counsel and judges within the specialized court system. How this works is key. In Delhi, for example, there are commercial courts, but they have a roster system in which a judge sits on an arbitration court for no more than six months, adding to the uncertainty. If language is a barrier, will the jurisdiction allow the use of English in the courts? This approach has been adopted in a variety of jurisdictions, such as Japan. Ideally, though, there needs to be a sufficient number of judges who can conduct such proceedings in English.

Also essential is the ease of access to the jurisdiction for everyone involved in the proceedings, including support staff. A city's success can turn on whether it has reliable and safe transportation links and visa and tax regulations favorable to parties, counsel, and arbitrators.

To all cities looking to become a preferred seat in international arbitration, I highly recommend being realistic about your goals and recalibrating if necessary. They may want to promote domestic arbitration, not as a stepping stone to global prominence, but as an alternative to courts, especially if the courts are backlogged. But to become a preferred seat, a city should focus on its unique strengths. Beyond a sound legal infrastructure, they must address procedural hurdles and uncertainty to ensure that parties have confidence and trust in the court system. And they must create a vibrant and business-friendly environment in the city that is conducive to resolving arbitration disputes.

Equally important, arbitral seats can only succeed where strengthening the arbitration ecosystem occurs simultaneously with making a genuine commitment to the rule of law, and do not forget, a little marketing and self-promotion of your city as an arbitration hub goes a long way.

Thank you, Charles Brower, Mélida Hodgson, and the American Society for International Law. Thank you to Georgetown Law School, and I am happy to answer any questions. Thank you.

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