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THE DISCUSSION ABOUT PARTY-APPOINTED ARBITRATORS: ADDRESSING "MORAL HAZARDS" WITH POSSIBLE SOLUTIONS

Arbitration is a widely favored method for resolving disputes, particularly in transnational business contexts. In order it to remain being an effective and favored means of dispute resolution is it crucial to keep arbitrators impartial and independent.

However, some practitioners and scholars argue that the system of party-appointed arbitrators compromises the independence and impartiality of arbitration. Professor Paulsson advocates abandoning this system, citing significant concerns. This article begins with an overview of current practices and the challenges they pose to impartiality. It then analyzes Paulsson's arguments in detail and examines counterpoints from other scholars who view party-appointed arbitrators as integral to the arbitration process. Finally, the article proposes several potential solutions – such as joint selection, appointment by neutral bodies, and AI involvement – to enhance independence and impartiality in party-appointed arbitrator system.

Key words: *AI, arbitration, blind appointments, impartiality, independence, joint appointment, party-appointed arbitrators, "moral hazard".*

1. Introduction

The appointment of arbitrators is one of the most fundamental steps in arbitration. Some think that "the appointment of arbitrators is the most frequent problem which keeps the arbitration agreement at a certain distance from an established tribunal which would render justice."[1] New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (afterwards "New York Convention") highlights the importance of the procedure of appointment of arbitrators. According to it, if the party was not given proper notice about the appointment of the arbitrator it may result in refusing to enforce an award.[2]

Generally, "the parties are free to agree on a procedure of appointing the arbitrator or arbitrators".[3] According to UNCITRAL Model Law on International Commercial Arbitration (afterwards "Model Law") if the parties fail to agree on the procedure of appointing the arbitrator/arbitrators" each party shall appoint one arbitrator, and the two arbitrators thus appointed shall appoint the third arbitrator".[4] Legislations of different countries (for example German and Georgian) follow Model Law.[5]

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1 *Várady T. and others*, International Commercial Arbitration: A Transnational Perspective (Seventh edition, West Academic Publishing 2019), 541.

2 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, Article V, 1(b): "Recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that: (b) The party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case."

3 UNCITRAL Model LAW on International Commercial Arbitration, Article 11, Paragraph 2.

4 Ibid, Article 11, paragraph 3(a)

5 Further information: German Code of Civil Procedure, Article 1035, section 3- "…In an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two arbitrators thus appointed shall appoint the third arbitrator who shall act as chairman of the arbitral tribunal..."

In this article, we will discuss the requirements of independence and impartiality of arbitrators. Also, explore Professor Paulsson's belief that having arbitrators chosen by one of the parties involved in the dispute carries a "moral hazard". We will discuss his arguments and reasoning and look at opposing opinions on this matter. Furthermore, we will try to draw potential solutions to avoid the "moral hazard" based on academic discussions surrounding this topic.

2. Independence and Impartiality of Arbitrators

Arbitration can be seen as a quasi-judicial process, so impartiality and independence of arbitrators are one of the fundamental principles of it.[6] Model Law requires an arbitrator to be independent and impartial.[7] According to it, justifiable doubts regarding the arbitrator's independence and impartiality can be grounds for challenging him.[8]

Furthermore, institutional rules – for instance International Chamber of Commerce (ICC) Arbitration Rules and Vienna Rules by Vienna International Arbitration Centre (VIAC) require arbitrators to possess these qualities.[9] Since, lack of independence and impartiality are grounds for challenging the arbitrators, they are widely discussed by practitioners and scholars of arbitration.

When nominated, arbitrators usually need to sign the declaration of their acceptance along with declaring their impartiality and independence.[10] They must also address any circumstances that could raise doubts about their independence, according to a standard form outlined in the UNCITRAL Arbitration Rules Annex.[11]

Interestingly, many national laws and international conventions use terms – independent and impartial interchangeably, to indicate the same meaning but it is not the same.[12] Although, we can say, it shows there is a deep linkage between these two terms. Independence is an objective criteria, that can be verified.[13] On the other hand, impartiality is more subjective and abstract, it requires an investigation to determine whether there is a real bias (lack of impartiality).[14]

Practically they are "the two faces of one coin".[15] According to the International Bar Association (IBA) Rules of Ethics for International Arbitrators, "dependence arises from relationships between an arbitrator and one of the parties, or with someone closely connected with one of the parties".[16] The concept of independence is connected to personal links or relationships that can be personal, social or financial.[17] The stronger the connection is, the less independent is the arbitrator.[18]

Law of Georgia on Arbitration, Article 11, Subparagraph 3, a- "In case of an arbitration consisting of three arbitrators, each party shall appoint one arbitrator and the two arbitrators appointed under this rule shall appoint the chairman of the arbitration…"

6 *Bastida B. M*., The Independence and Impartiality of Arbitrators in International Commercial Arbitration, Revista E-Mercatoria, Vol. 6, №1, 2007, 1.

7 UNCITRAL Model Law on International Commercial Arbitration, article 12, paragraph 1: "When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose any circumstances likely to give rise to justify able doubts as to his impartiality or independence. An arbitrator, from the time of his appointment and throughout the arbitral proceedings, shall without delay disclose any such circumstances to the parties unless they have already been informed of them by him."

8 Ibid, Article 12(2).

9 ICC Rules of Arbitration, Article 11(2), Vienna Rules, VIAC, Article 16(3).

10 *Várady T. and others*, International Commercial Arbitration: A Transnational Perspective (Seventh edition, West Academic Publishing 2019), 415.

11 Ibid.

12 *Jaffae A. and Dash A*., Grounds of the Challenge of Arbitrators: The Difference between Independence and Impartiality, International Journal of Law Management & Humanities, Vol. 5, Issue 1, 2022, 1858-1861.

13 Ibid, 1861.

14 *Feebily R*., Neutrality, Independence and Impartiality in International Commercial Arbitration, a Fine Balance in the Quest for Arbitral Justice, Penn State Journal of Law and International Affairs, Vol. 7, №1, 2019, 90.

15 *Jaffae A. and Dash A*., Grounds of the Challenge of Arbitrators: The Difference between Independence and Impartiality, International Journal of Law Management & Humanities, Vol. 5, Issue 1, 2022, 1861.

16 International Bar Association (IBA) Rules of Ethics for International Arbitrators, Article 3(1).

17 *Bastida B. M*., The Independence and Impartiality of Arbitrators in International Commercial Arbitration, Revista E-Mercatoria, Vol. 6, №1, 2007, 3.

18 Ibid, 4.

On the other hand, impartiality relates to the arbitrator's mindset towards the parties, their lawyers, or the issues concerning the dispute.[19] IBA Rules of Ethics for Arbitrators states that "partiality arises when an arbitrator favours one of the parties, or where he is prejudiced in relation to the subject matter of the dispute".[20]

It is said, that impartiality may only become visible during the conduct of the proceedings and in the award.[21] It is an emotional state that cannot be proven, it only appears through behavior.[22] Nevertheless, the lack of independence of an arbitrator can be proven by documents or other material evidence, such as contracts or agreements that show certain kind of relationship between the arbitrator and the party or party's lawyer.[23]

Some believe that an impartial arbitrator who is not fully independent can be qualified, but an independent one who is not impartial must be disqualified without question.[24] This is reasonable because an arbitrator with some kind of prior relationship with the party can be professional and decide the dispute without any bias, but when he emotionally favors the party, he cannot make an unbiased decision. But once again, it is hard to prove when an arbitrator is independent but partial.

There is also a requirement of neutrality towards arbitrators. Some see it as an "exterior sign" of possible impartiality.[25] Scholars say that "what is relevant here, are not links (of the arbitrator) with one of the parties, but links with one of the critical issues that might shape an "inappropriate predisposition".[26]

Neutrality can be seen as: direct (the absence of family and business connections) and indirect (group affiliation, such as nationality, religion, ethnic background…).[27] Direct neutrality is easier to accomplish and easier to translate into rules, while "the exclusion of individuals, because of their group affiliation, opens a Pandora's Box."[28]

3. Professor Paulsson's Views on Part-Appointed Arbitrators

Professor Paulsson in his article "Moral Hazard in International Dispute Resolution" tries to convinces us, that party-appointed arbitrators are often biased and they lack independence and impartiality. He offers to abandon the practice of unilateral appointment, stating that nowadays he is in the minority, but the majority's "reactions are based on the status quo, not analysis".[29] Paulsson thinks, that he will be in the majority by 2060.[30] Let us now discuss his main arguments and reasoning in this section.

Paulsson starts to prove his opinion by giving some known examples of how party-appointed arbitrators were biased or influenced by the parties. He remembers a case, where a party-appointed arbitrator violated the secrecy of the tribunal's deliberations and let the party that appointed him know the award in advance.[31] The advance knowledge of the award was an important advantage, as the parties were involved in the negotiations.[32] Paulsson also alleges that such breaches are hard to prove or monitor and in a given case it was solved because the arbitrator immediately confirmed that he had disclosed the decision in advance.[33]

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19 *Jaffae A. and Dash A*., Grounds of the Challenge of Arbitrators: The Difference between Independence and Impartiality, International Journal of Law Management & Humanities, Vol. 5, Issue 1, 2022, 1861.

20 International Bar Association (IBA) Rules of Ethics for International Arbitrators, Article 3(1).

21 *Várady T. and others*, International Commercial Arbitration: A Transnational Perspective (Seventh edition, West Academic Publishing 2019), 408.

22 *Jaffae A. and Dash A*., Grounds of the Challenge of Arbitrators: The Difference between Independence and Impartiality, International Journal of Law Management & Humanities, Vol. 5, Issue 1, 2022, 1862.

23 Ibid.

24 *Bastida B. M*., The Independence and Impartiality of Arbitrators in International Commercial Arbitration, Revista E-Mercatoria, Vol. 6, №1, 2007, 4, further reference: *Bishop D, Reed L,* Practical Guidelines for Interviewing, Selecting and Challenging Party Appointed Arbitrators in International Commercial Arbitration Arbitration International 14, 345, 1998.

25 Ibid, 407.

26 Ibid, 414.

27 *Várady T. and others*, International Commercial Arbitration: A Transnational Perspective (Seventh edition, West Academic Publishing 2019), 408.

28 Ibid.

29 *Paulsson J*., Moral Hazard in International Dispute Resolution, ICSID Review – Foreign Investment Law Journal, Vol. 25, Issue 2, 2010, 340, 348.

30 Ibid, 340.

31 Ibid, 344.

32 Ibid.

33 Ibid.

He also presents a case, where the U.S. former judge, who had also served in other branches of government, was unilaterally appointed by the U.S. as an arbitrator in the *Loewen case*, decided in 2003.[34] Later this arbitrator revealed how the U.S. put pressure on him.[35] Above mentioned cases, clearly illustrate that very often parties will is to influence unilaterally appointed arbitrators.

Paulsson alleges, that "two recent studies of international commercial arbitration have revealed that dissenting opinions were almost invariably (in more than 95% of the cases) written by an arbitrator nominated by the losing party".[36] He wants to show, that party-appointed arbitrators often try to please the parties that appointed them by writing dissenting opinions. But the dissenting opinion may just mean that "the appointing party has made an accurate reading of how its nominee is likely to review certain propositions of law or circumstances of the fact".[37] So, it does not always mean that the arbitrator was biased. Also, we should keep in mind, that there is always a fine line between an arbitrator who is favorably disposed and someone who could be subject to legitimate challenge.[38]

Paulsson states, that parties often think their nominee should help them in the case.[39] He asserts that, apart from being morally questionable, this mindset is inherently illogical.[40] Those who adopt this perspective must trust that their opponents will follow rules, and it prompts the question of why they believe they can manipulate the system more proficiently than their opponents.[41]

Paulson also does not completely agree with his opponents' arguments that, "parties have greater confidence in arbitrators selected for their special knowledge or skill" and that their nominee will ensure that the tribunal as a whole understands their culture".[42] He agrees that it is the advantage of arbitration that an arbitrator can be selected based on his special expertise and knowledge (even sometimes based on understanding specific culture), but alleges that this aim can be achieved without party-appointed arbitrators.[43] He acknowledges that parties are afraid of being treated as an outsider, but thinks that unilateral appointments are more likely to deepen the problem than to solve it.[44] Paulsson alleges that when the arbitrator chosen by the "losing party" writes a dissenting opinion, in the eyes of that party that decision is less legitimate than the same decision would have been in the case of a sole arbitrator.[45] On the other hand, some argue that it is not problematic if a party-appointed arbitrator is not trusted by both sides, as long as the parties have confidence in the arbitral tribunal as a whole rather than in each individual arbitrator.[46]

Paulsson also highlights the problem of iniquitous bargains and compromises during unanimous decisions, that are militated by unilateral appointment of arbitrators.[47] He suggests that arbitrators can silently back each other's decisions to form unanimous decisions, when serving as each other's co-arbitrators and that way make unanimous decisions, without this practice being noticed.[48]

We can say that, Paulson's arguments are convincing, and he proves his arguments with examples and statistics. In favor of Paulson's arguments we can state Professor Hans Smit's opinion that the counsel's duty is to appoint someone who is most likely to obtain the best result for the client and the arbitrator's incentive is to guarantee his reemployment by providing its party with a favorable outcome.[49] Some also claim, "that certain

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34 Ibid.
35 Ibid, 344-346.
36 Ibid, 348.
37 Ibid, 349.
38 *Oglinda B*., Key Criteria in Appointment of Arbitrators in International Arbitration, Juridical Tribune, Vol. 5, №2, 2015, 127.
39 *Paulsson J*., Moral Hazard in International Dispute Resolution, ICSID Review – Foreign Investment Law Journal, Vol. 25, Issue 2, 2010, 349.
40 Ibid.
41 Ibid.
42 Ibid, 350.
43 Ibid, 350.
44 Ibid, 351.
45 Ibid.
46 *Brower C. N. and Rosenberg C. B*., The Death of the Two-Headed Nightingale: Why the Paulsson—van den Berg Presumption that Party-Appointed Arbitrators are Untrustworthy is Wrongheaded, Arbitration International, Vol. 29, Issue 1, 2013, 13.
47 Ibid, 353.
48 Ibid.
49 *Narmania G*., Party-Appointed Arbitrators: Past, Present and Future, Alternative Dispute Resolution Yearbook, 2014, 67.

partisan arbitrators are signaling their predispositions to future clients."[50] Overall, Paulsson agrees that the practice of party-appointed arbitrators cannot easily be changed, so he is ready for some pragmatic solutions until his view is the prevailing one.[51]

4. Discussions in Support of Party-Appointed Arbitrators

Party autonomy, which includes the selection of the arbitrator and agreement on this selection process, is considered by many, as a cornerstone of arbitration.[52] We can say that, party appointed arbitrators clearly benefit the efficiency of the process, "because of the parties' knowledge about their own dispute, each party's control of the appointment may ultimately lead to better tribunals in terms of legal and commercial qualifications, cultural and linguistic comprehension, and availability".[53]

It means that the arbitrator will have more specific knowledge of the area of the dispute and probably better understanding of the jurisdiction, that governs the contract. Above mentioned, will lead the arbitral tribunal to render an award faster, so it will save time of parties and will benefit the efficiency of the process in general. As a rule, Parties aim is to settle a dispute faster, so in this aspect, party-appointed arbitrator is clearly a benefit.

Parties take into consideration a lot of widely recognized criteria while choosing an arbitrator (for example: impartiality, independence, honorability, availability) but mostly, they take into consideration feeling comfortable and confident with the judgment of the arbitral tribunal.[54] So, parties, of course, will try to choose an arbitrator who is more likely to render an award in their favor. As Paulsson says, they think their nominee will help them win the case.[55]

On the other hand, generally, both parties choose an arbitrator and then these two choose the third arbitrator. Even in a situation, where both party-appointed arbitrators are biased, still the decision will depend on the third neutral arbitrator, which will not be appointed by the parties. We cannot say clearly, that party-appointed arbitrators benefit the fairness of the process, but we can argue that, it does not obstruct the fairness of the process *per se* if parties appoint them following IBA Guidelines on Conflicts of Interest in International Arbitration, Model Law and other legislative provisions.

Many believe, that parties prefer to settle disputes through arbitration "due to a sense of participation in the constitution of the tribunal".[56] It is also said, that the legitimacy of international arbitration largely depends on the active involvement of the parties in the process of appointing the arbitrators.[57] Because of party involvement in the appointment of arbitrators, the process is not perceived as something wholly external to them.[58] So, the feeling of the parties that they are involved in selecting arbitrators, makes arbitration more attractive and trustworthy for them. We can say this is one of the reasons for the prevalence of this system.

Moreover, arbitrators are successful, when they earn a professional reputation (meaning they are honest, independent and impartial) and retain it.[59] American investor Warren Buffet has said that "a stellar reputation 'takes 20 years to build... and five minutes to ruin."[60] It will be unreasonable to think, that a successful arbitrator will risk his reputation to please a party that appointed him with a biased decision.

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50 *Schwing M. A*., Don't Rage Against the Machine: Why AI May Be the Cure for the 'Moral Hazard' of Party Appointments, Arbitration International, Vol. 36, Issue 4, 2020, 498.

51 *Paulson J*., Moral Hazard in International Dispute Resolution, ICSID Review – Foreign Investment Law Journal, Vol. 25, Issue 2, 2010, 352.

52 *Philip D. A*., Neutrality vis-a-vis Party Autonomy in Appointment of Arbitrators, International Journal of Law Management & Humanities, Vol. 4, Issue 6, 2021, 1203.

53 *Tufte-Kristensen J*., The unilateral appointment of co-arbitrators, Arbitration International, Vol. 32, Issue 3, 2016, 503.

54 *Oglinda B*., Key Criteria in Appointment of Arbitrators in International Arbitration, Juridical Tribune, Vol. 5, №2, 2015, 124.

55 *Paulsson J*., Moral Hazard in International Dispute Resolution, ICSID Review – Foreign Investment Law Journal, Vol. 25, Issue 2, 2010, 349.

56 *Philip D. A*., Neutrality vis-a-vis Party Autonomy in Appointment of Arbitrators, International Journal of Law Management & Humanities, Vol. 4, Issue 6, 2021, 1206.

57 *Brower C. N. and Rosenberg C. B*., The Death of the Two-Headed Nightingale: Why the Paulsson–van den Berg Presumption that Party-Appointed Arbitrators are Untrustworthy is Wrongheaded, Arbitration International, Vol. 29, Issue 1, 2013, 9.

58 Ibid, 22.

59 Ibid, 16.

60 Ibid.

Scholars, who disagree with Paulsson, think that party selection of arbitrators enhance the legitimacy of international arbitration and not vice versa.[61] Professor Giorgio Sacerdoti defends the existing system of party-appointed arbitrators and states that "the right to select the tribunal distinguishes arbitration from litigation and gives a possibility to appoint arbitrators that would reflect the expectations of the appointing party by nationality, language, culture, legal and technical expertise."[62]

We should highlight, that if arbitral tribunal had been constituted by third parties, one of the main differences between arbitration and litigation in courts would have been extinguished. Some scholars believe, that Paulsson overrates the 'moral hazard' in association with party-appointed arbitrators.[63] They think, that restricting the unilateral appointment of arbitrators will impede the further development of international arbitration.[64] All the above-mentioned facts and arguments clearly show why this system is prevailing today. We should also remember, that "arbitrators' cognitive biases cannot be eliminated, even by eliminating party-appointed arbitrators".[65]

5. Possible Solutions for Preserving Integrity and Fairness of the Process

Let's now discuss the possible solutions that can guarantee more integrity and fairness of the arbitral process. Paulsson thinks that the only decent solution will be to choose arbitrator jointly or it to be selected by a neutral body.[66] But assuming, that it is not easy to move away from the practice of party-appointed arbitrators, Paulsson offers some pragmatic solutions. One solution would be, to restrict unilateral appointments by specific contractual limitations, "such as requiring that no arbitrator may have the nationality of any party".[67] Paulsson states, that it is not a guarantee but it may still be effective.[68]

Paulsson suggests, making appointments out of preexisting lists of qualified arbitrators.[69] He suggests that reputable institutions should make these lists and there should be built-in mechanisms to monitor and renew the list, and that such lists will guarantee more impartiality and independence of arbitrators.[70] Others reasonably argue, that "such a system would end up reinforcing the primacy of the current, non-diverse 'club' of elite arbitrators at a time when the emphasis is on expanding the pool of arbitrators, not restricting it."[71]

Paulsson also comes up with the idea of "blind appointments" ("i.e. seeking to ensure that nominees do not know who appointed them").[72] This can really be an effective tool to ensure impartiality of the arbitrator, but still, the arbitrator will be able to know which party appointed them in most of the cases.[73]

We can think of a practical solution, with an arbitral tribunal consisting of 5 arbitrators, where 3 of them are appointed by the president of the arbitration institution.[74] Such arbitration tribunals would still have party-appointed arbitrators, but they would be in a minority, meaning not be able to impact the decisions alone. That

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61 *Schwing M. A*., Don't Rage Against the Machine: Why AI May Be the Cure for the 'Moral Hazard' of Party Appointments, Arbitration International, Vol. 36, Issue 4, 2020, 495.

62 *Narmania G*., Party-Appointed Arbitrators: Past, Present and Future, Alternative Dispute Resolution Yearbook, 2014, 69.

63 *Brower C. N. and Rosenberg C. B*., The Death of the Two-Headed Nightingale: Why the Paulsson–van den Berg Presumption that Party-Appointed Arbitrators are Untrustworthy is Wrongheaded, Arbitration International, Vol. 29, Issue 1, 2013, 9.

64 Ibid, 44.

65 *Rogers C. A*., Reconceptualizing the Party-Appointed Arbitrator and the Meaning of Impartiality, Harvard International Law Journal, Vol. 64, №1, 2023, 137.

66 *Paulsson J*., Moral Hazard in International Dispute Resolution, ICSID Review – Foreign Investment Law Journal, Vol. 25, Issue 2, 2010, 352.

67 Ibid.

68 Ibid.

69 Ibid.

70 Ibid.

71 *Schwing M. A*., Don't Rage Against the Machine: Why AI May Be the Cure for the 'Moral Hazard' of Party Appointments, Arbitration International, Vol. 36, Issue 4, 2020, 502.

72 *Paulsson J*., Moral Hazard in International Dispute Resolution, ICSID Review – Foreign Investment Law Journal, Vol. 25, Issue 2, 2010, 353.

73 *Schwing M. A*., Don't Rage Against the Machine: Why AI May Be the Cure for the 'Moral Hazard' of Party Appointments, Arbitration International, Vol. 36, Issue 4, 2020, 502.

74 *Philip D. A*., Neutrality vis-a-vis Party Autonomy in Appointment of Arbitrators, International Journal of Law Management & Humanities, Vol. 4, Issue 6, 2021, 1206.

way parties still would feel the involvement in the constitution of the tribunal, but in the case the arbitrator appointed by them is biased, it will not have that much impact on the fairness of the process.

Also, joint appointments can be a possible solution, in that case, parties will select all panel members together (jointly).[75] The parties shall conduct the interviews with possible arbitrators together and choose them together.[76] An arbitral tribunal constituted in such a way will be more impartial because arbitrators would not feel they are obliged to do a favor to one particular party. On the other hand, in practice, such an appointment will be very time-consuming and sometimes even impossible, because parties that are already in conflict will find it hard to agree on the same particular arbitrator.

Moreover, in 21st century – technological era, we should not limit our ideas about ways of selecting arbitrators with traditional methods. Mel Andrew Schwing came up with the idea to use AI (artificial intelligence) in the process of selecting arbitrators, he states that, "shifting to an AI-based system of arbitrator selection could make the practice of international arbitration fairer and less acrimonious."[77] He offers a system where AI will automatically appoint the arbitrators, but there can be made a way of party involvement while selecting the arbitrators, so that way the parties will still have a feeling of involvement in the constitution of the arbitral tribunal. How to make such a system needs a lot of time, discussion among scholars and practitioners and then a lot of testing of the created system. We can presume that, in the future, AI will, definitely, somehow get involved in the selection process of the arbitrators.

6. Conclusion

As we have discussed, Professor Paulsson argues that the practice of unilateral party-appointed arbitrators should be abandoned, viewing the resulting biases as a "moral hazard" that needs to be addressed. [78] On the other hand, some disagree, considering party-appointed arbitrators as the cornerstone of the arbitration process.

We have explored potential solutions that can preserve the system of party-appointed arbitrators, including: joint selection of arbitrators or selection by a neutral body, joint appointments; blind appointments or even appointments by AI.

We should remember a saying, "if it ain't broke, don't fix it." Despite concerns about potential "moral hazards", arbitration continues to grow in popularity, possibly due to the unilateral party-appointment system itself. Thus, rather than abandoning this system, it may be more effective to introduce institutional and legislative guarantees to ensure the fairness and impartiality of the arbitration process.

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75 *Narmania G*., Party-Appointed Arbitrators: Past, Present and Future, Alternative Dispute Resolution Yearbook, 2014, 70.

76 Ibid.

77 *Schwing M. A*., Don't Rage Against the Machine: Why AI May Be the Cure for the 'Moral Hazard' of Party Appointments, Arbitration International, Vol. 36, Issue 4, 2020, 506.

78 *Paulsson J.,* Moral Hazard in International Dispute Resolution, ICSID Review – Foreign Investment Law Journal, Vol. 25, Issue 2, 2010, 348.

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