

Highlights from the Nordic Arbitration Day

Arbitration analysis: On 27 January 2023, the third Nordic Arbitration Day Conference was hosted by the Young Arbitration Practitioners Norway. The conference consisted of a variety of panel discussions on guerrilla tactics in arbitration, investment arbitration, dealing with experts in arbitration proceedings, and diversity in arbitration. [Jacob Ericson](#), senior associate at [Westerberg](#), comments on the highlights from the Nordic Arbitration Day conference.

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The Young Arbitration Practitioners Norway hosted the third Nordic Arbitration Day conference on 27 January 2023 in Oslo. It brought together around 200 legal professionals and featured various panel discussions around the current state of play in the field of arbitration in the Nordics. Below are some of the highlights.

Following welcoming remarks from [Nora Fredstie](#) (White & Case), the first panel discussed the topic of guerrilla tactics in arbitration. In summary, these are tactics that a party may adopt to gain an advantage in arbitration proceedings which are unconventional, unexpected, or simply disruptive. For example, throwing a curve ball by filing a motion at the last minute; introducing an excessive amount of evidence hindering the other party and arbitrator(s) from progressing with the case or raising issues that are not of immediate relevance causing distraction from the main issues in the case at hand. During the panel discussion, various courses of action when coming up against such tactics were explored—both from the position of the opposing party and the arbitrator. Inspiration was loosely drawn from a real-life case which brought a very practical flavour to the discussion among the panellists, Bettina Thaulow Harto (Thommesen), [Jacob Ericson](#) ([Westerberg](#)), [Daniel Haue Jakobsson](#) (Accura) and moderator [Anders Bjørn Munthe](#) (Hafnia). The discussion that followed evidenced that the Nordic jurisdictions generally adopt a more pragmatic approach in dealing with such tactics, essentially weighing between the parties' rights to efficient proceedings and due process.

A second panel discussion concerned investment arbitration in the Nordics and comprised [Therese Sætre Løfsgaard](#) (Simonsen Vogt Wiig), [Andreas Hallbeck](#) (Roschier), [Mrinalini Singh](#) (Plesner), [Teemu Auressalmi](#) (Castrén & Snellman) and moderated by [Ricardo Gomes](#) (Hannes Snellman). An interesting take away was the discrepancies among the Nordic countries when it comes to existing bilateral investment treaties (BITs)—Sweden having concluded the most BITs (73) whereas Norway significantly less (18), presumably stemming from a reluctance to renege state control. This has been particularly topical in light of the snow-crab fishing disputes under the Latvia-Norway BIT and the Lithuanian-Norway BIT, which Norway and the Baltic states have moved to terminate.

Another panel discussion, featuring [Bastian Sundling](#) (Wiersholm), [Robin Rylander](#) (Mannheimer Swartling), [Asbjørn de Roepstorff](#) (Lassen Ricard), [Yi Ling Ng](#) (RBB Economics) and moderated by [Eric Johnson](#) (Cederquist), focused on dealing with experts and best practices for engaging them in an arbitration proceedings. Often the role of an expert is critical, but what best strengthens a case is using an expert in a smart way. There should be an emphasis on collaboration—the expert should always play an integral role in actually building the case rather than providing expert input from the sidelines. The expert can be integral in gathering evidence and providing input on how to best present such evidence. They are also sometimes best equipped to help streamline the process by quickly identifying and addressing key issues, in turn, actually reducing time and costs. An effective expert can in fact steer the direction of the case in a more favourable direction if he or she is more active in it.

The Keynote address of the conference focused on diversity in arbitration. The speakers, Ulrikke Størseth (Wikborg Rein) and [Bodil Høstmælingen](#) (CLP), talked about how much work needs to still be done in this area. The importance of this topic and the benefits that diversity brings to an arbitration proceeding cannot

be gainsaid. What was emphasised is how a diverse tribunal aids fairness and also gives the process enhanced legitimacy and, in turn, the award. It also makes for improved decision-making. Further, if there is diversity, the arbitration process is perceived to be inclusive and accordingly more attractive to users from diverse backgrounds as they can feel more assured that the process is fairly representative. Given all of this, diversity should be at the forefront of all practitioners' minds when making decisions regarding who to engage in an arbitration process.

The conference ended with a soapbox debate. Different highly topical subjects were put forward to the debaters, [Tage Brigt A Skoghøy](#) (DLA Piper), [Sara Magnéli](#) (Cederquist), [Regitze Aalykke Hansen](#) (Poul Schmidt), [Tatu Jaarinen](#) (HPP Attorneys) (moderated by [Silje Helene Bakkevig Dagsland](#), Haavind). For example, one topic was whether Russian state-owned entities should be afforded representation by local counsel in civil cases before foreign courts and arbitral tribunals, which raised questions and the tension around issues of ethics and fairness and due process under the rule of law. This and other controversial topics, while sometimes difficult to openly discuss, were not shied away from by the participants, which led to really gripping discussions.

As with the first two held in Stockholm and Copenhagen, the third Nordic Arbitration Day gave the opportunity for legal professionals that are passionate about arbitration to discuss the latest developments in this field. One of the real strengths of this conference is the fact that it really focuses on the practical aspects of arbitration, rather than purely academic. It also facilitates meaningful engagement on these topics and, while the panel speakers present them, there is always room and in fact encouragement for the audience to engage in the dialogue and exchange ideas. This makes for a richer experience. The next conference will be hosted by the Young Arbitrators Club Finland in Helsinki in April 2024. No doubt, it will not disappoint.

Interviewed by Ashling Gallagher