JRLA, 3(8), August, 2026: 106-121

Online ISSN: 3048-667X
CODEN (CAS, USA): JRLAB4
Impact Factor: 3.66

JOURNAL OF THE ROYAL LAUREATES ACADEMY

www.rlaindia.org

UNDISCLOSED MATERIAL RELIANCE ON AI IN ARBITRAL DECISION-MAKING: RECOGNITION AND ENFORCEMENT UNDER ARTICLE V OF THE NEW YORK CONVENTION

Rahat Tabassum

Independent Researcher, Barrister-at-Law, ACIArb, Accredited Mediator (ADR/ODR), UK

E-mail: barristerrahat@gmail.com

DOI: https://www.doi-ds.org/doilink/09.2025-88968269/JRLA/08202606

ABSTRACT

The use of artificial intelligence by arbitral tribunals has moved from speculation to practice, yet its implications for the recognition and enforcement of awards under the 1958 New York Convention remain unresolved. This article argues that the use of AI, by itself, is not a ground for refusing recognition or enforcement. The central concern is not the use of AI itself. It is the material and undisclosed reliance on AI. The concern is greater where the AI output influenced the tribunal's reasoning, rather than simply the way that reasoning was expressed. The parties must also have been unaware of that reliance. In such circumstances, Article V(1)(d) provides the strongest basis for addressing the problem because it concerns a departure from the arbitral procedure agreed by the parties. Article V(1)(b) may apply where AI-generated material falls outside the arbitral record and the parties had no opportunity to respond to it. Article V(2)(b), by contrast, should be reserved for the most exceptional cases.

Drawing on the Québec Superior Court's decision in *ARIHQ c Santé Québec*, the *Yukos* set-aside proceedings, and the emerging academic commentary, this article proposes a five-factor framework for enforcement courts. It also argues that non-disclosure should have an evidential consequence. Where a tribunal has failed to disclose its material use of AI, the court should be able to draw an adverse inference when deciding whether the required prejudice has been established.

Keywords: artificial intelligence; international arbitration; New York Convention; Article V; enforcement; due process; arbitral mandate.

 Online ISSN: 3048-667X
CODEN (CAS, USA): JRLAB4
Impact Factor: 3.66

1. INTRODUCTION

Generative AI is no longer merely experimental in international arbitration. Its use is becoming increasingly common, although the extent of adoption still varies across the profession. For now, AI is generally used to assist arbitrators rather than replace them. The 2025 Queen Mary International Arbitration Survey identifies these as the main areas of current AI use. It also reports that 52% of respondents expect arbitrators to rely more heavily on AI in the future.

Arbitral institutions are working on establishing principles for the responsible use of AI. The Silicon Valley Arbitration and Mediation Center (SVAMC) produced the Guidelines on the Use of Artificial Intelligence in Arbitration in April 2024 [2], and the Chartered Institute of Arbitrators (CIArb) followed suit in March 2025 [3]. The AAA-ICDR's AI-Led Arbitration Rules, as amended and effective from 18 February 2026, establish an opt-in framework for two-party, documents-only construction disputes.[4] This framework is particularly significant because it is founded on the parties' consent. Against that backdrop, it becomes considerably more difficult to argue that the absence of party consent in other AI-assisted arbitral proceedings is legally insignificant. In addition, Annex III, point 8(a) of the EU AI Act classifies as high-risk AI systems that are used by, or on behalf of, judicial authorities to research and interpret facts and the law, apply the law to the facts of a case, or perform similar functions in alternative dispute resolution. Recital 61 explains that AI systems used in ADR fall within this category where the outcome of the proceedings has legal effects for the parties. The obligations for stand-alone high-risk AI systems listed in Annex III were initially scheduled to take effect on 2 August 2026. However, this timetable was postponed by the Digital Omnibus on AI, Regulation (EU) 2026/1744.[5,6]

These instruments have sparked significant debate on ethics, transparency, and governance. Hayat and Azhar examine the relationship between Articles V(1)(b), V(1)(d), and V(2)(b) and the use of AI in arbitral awards. They conclude that challenges to AI-generated reasoning fit more naturally within Articles V(1)(b) and V(2)(b) than Article V(1)(d), arguing that the latter does not impose an independent obligation to disclose AI use unless the parties have agreed otherwise.[7] Ast argues that an AI-drafted award, later approved without meaningful scrutiny by a nominated arbitrator, already amounts to a procedural irregularity under Article V(1)(d). Ortolani, by contrast, considers the implications of wholesale de facto delegation by drawing on the existing line of authority concerning tribunal secretaries.[8] The position advanced in this article, that Article V(1)(d) provides the strongest basis for challenge where reliance on AI is both material and undisclosedis not presented as novel but as one side of an ongoing debate.

Rather than asking whether the New York Convention is capable of accommodating this issue, the article addresses the question left open by the existing commentary: how an enforcement court should deal with such a challenge, and the legal test it should apply. In April 2026, the Quebec Superior Court annulled an arbitral award under article 646(3) of the Quebec Code of Civil Procedure after finding that the authorities relied on by the sole arbitrator did not exist and had, in all likelihood, been generated by an AI tool. This provision is similar to Article V(1)(d) of the New York Convention. However, the case involved the annulment of an award at the seat of the arbitration, not the recognition or enforcement of an award under the New York Convention. [9]

This article contends that, on its own, use of AI should not be a basis for denying enforcement. Rather, it considers the possibility of "undisclosed and material" reliance on AI being a violation of Article V(1)(d) and Article V(1)(b) and, in very limited circumstances, Article V(2)(b), and introduces a five-factor test for enforcement courts. For these purposes, reliance is material where the AI output shaped the tribunal's reasoning rather than merely the way that reasoning was expressed.

2. THE USE OF AI IN THE PROCESS OF ARBITRAL DECISION-MAKING

AI can be introduced into the arbitral process at several junctures; and it is not so much the label AI that matters, as the distinctions among them.

The first area is research. AI-powered retrieval tools can identify relevant authorities, trace arguments across extensive case records, and reveal inconsistencies within the record.[1] When used appropriately, this is simply an extension of the work that tribunal secretaries have long carried out.

The second area is summarisation. The ability of AI tools to condense thousands of pages of pleadings, transcripts, and exhibits into a concise working summary is undoubtedly convenient, but its significance extends beyond mere efficiency.[1] A summary is never entirely neutral. It inevitably involves selecting certain points, assigning them greater weight, and omitting others. Where a tribunal relies on the summary rather than engaging with the underlying record itself, it has, to that extent, allowed the machine to shape what receives its attention.

The third area is drafting. Here, the AI tool generates text, whether a procedural history, a section of legal reasoning, or, on occasion, a draft award. The arbitrator then reviews, edits, and adopts the text. [10]

Across all three areas, the critical distinction is between assistance and delegation. Assistance

Online ISSN: 3048-667X
CODEN (CAS, USA): JRLAB4
Impact Factor: 3.66

leaves the arbitrator's judgment untouched: the tool prepares the material, but the arbitrator remains responsible for making the decision. Delegation, by contrast, involves transferring part of the adjudicative function itself to the AI system. [2, 3]

The institutional guidance comes to a focus along that line. [2,3] If we look at the SVAMC guidelines, it has made it clear that the responsibility is on the arbitrator while they are making any decision. Furthermore, Guideline 6 makes it clear that an arbitrator must not delegate any part of their personal role to an AI tool, specially when making decisions, although AI may be used to assist with certain tasks. Guideline 7 further provides that if an arbitrator is relying on AI generated material which is not in the arbitral record, then, the arbitrator must disclose this to the parties in advance and, as far as practicable, give them an opportunity to comment on it before taking it into account. [2,11] Part IV of the CIArb Guidelines adopts the same approach, and Appendices A and B provide a model agreement and a template procedural order that enables parties to establish the rules governing AI use at the outset of the arbitration.[3] Other arbitral institutions have also published guidance on the use of AI. The SCC issued its *Guide to the Use of Artificial Intelligence in Cases Administered under the SCC Rules* in October 2024.[12] This was followed by the VIAC's *Note on the Use of Artificial Intelligence in Arbitration Proceedings* in April 2025.[13] However, by the middle of 2026, several leading arbitral institutions, including the LCIA, SIAC, and HKIAC, had not issued any formal guidance on the use of AI. The ICC Commission on Arbitration and ADR announced the establishment of a Task Force on Artificial Intelligence in International Dispute Resolution at its meeting on 14 September 2024. The Task Force was formally constituted during 2025, but as of mid-2026 it had not yet published its report. Meanwhile, the 2026 revision of the ICC Rules of Arbitration does not contain any express provision governing the use of AI. Institutional guidance on the use of AI in arbitration predates the current debate over enforcement. The AAA-ICDR was the first arbitral institution to address the issue, publishing its *Principles Supporting the Use of AI in Alternative Dispute Resolution* in 2023, before issuing its *Guidance on Arbitrators' Use of AI Tools* in 2025, which requires arbitrators to retain full control over the decision-making process. JAMS followed with its *AI Disputes Rules* in 2024, while CIETAC has likewise issued guidance on the use of AI. Even so, these instruments are directed at arbitrators and parties rather than enforcement courts. Nor do they attempt to determine the consequences of non-compliance for the recognition or enforcement of an award. A significant gap therefore remains.[11]

There are two aspects of this soft law to be highlighted. It does not require any binding

Online ISSN: 3048-667X
CODEN (CAS, USA): JRLAB4
Impact Factor: 3.66

agreement, and disclosure is done voluntarily. The two features do not bind an enforcement court.

3. ARTICLE V OF THE NEW YORK CONVENTION

There are specific grounds for denying recognition and enforcement provided in Article V of the 1958 Convention. Three of those grounds are relevant here, and each is narrowly construed. This article does not examine Article V(1)(e). The provision applies where an arbitral award has not yet become binding on the parties or has been set aside or suspended by a competent authority in the country where, or under the law of which, the award was made. Although it provides a basis for refusing recognition or enforcement, its operation is derivative in nature. The focus is on the decision of the court at the seat, rather than on the enforcing court's own assessment of the manner in which the award was reached. For that reason, Article V(1)(e) offers limited assistance in addressing the issue considered in this article, namely, whether an enforcing court may refuse recognition or enforcement because a tribunal made undisclosed use of AI during the arbitral process. The provision has also attracted attention in a different context: whether an AI system may itself serve as an arbitrator where the law of the seat requires arbitrators to be natural persons. That issue raises distinct legal questions and falls beyond the scope of this article, which is concerned solely with the undisclosed use of AI by a human arbitrator. [8]

3.1 Article V (1)(b)

First, consider Article V (1)(b). It is a due process clause in the Convention. Courts interpret this narrowly to allow refusal if the resisting party is not provided with proper notice of the appointment of the arbitrator, of proceedings, and/or was otherwise unable to present its case.

In Consorcio Rive v Briggs of Cancun, the court has enforced the arbitral award, even though the respondent has chosen not to take part in the arbitration. The reason behind this was, the Eastern District of Louisiana found that the respondent had received continuous notice of the hearing dates and had been given sufficient opportunity to present the case. Afterwards, when the respondent then challenged enforcement under Article V (1) (b), the defence was rejected, and the Fifth Circuit later upheld that decision in an unpublished judgment. [14,15] US courts have gone so far as to equate the ground with the opportunity to be heard at a meaningful time and in a meaningful manner, which, again, is a fairly thin protection in practice. [16]

The burden of resisting enforcement rests with the party challenging the award. In most

Online ISSN: 3048-667X
CODEN (CAS, USA): JRLAB4
Impact Factor: 3.66

jurisdictions, demonstrating the existence of a procedural irregularity alone is insufficient. The party opposing enforcement must also establish that the irregularity was material, meaning that it was capable of influencing the outcome of the proceedings. [17,18] The position under Article V(1)(d), however, is less clear-cut. While many courts likewise require proof that the procedural departure was material, others have held that a failure to comply with the parties agreed procedure is, by itself, enough to justify refusing enforcement. This article adopts the former approach, as it reflects the view more commonly taken by courts, while recognising that the issue remains the subject of judicial disagreement.

3.2 Article V (1) (d)

Article V (1) (d) is founded on a different principle. Its application does not depend on whether the proceedings were fair. Instead, it permits the refusal of recognition or enforcement where the composition of the arbitral tribunal or the arbitral procedure departed from the parties' agreement or, in the absence of such an agreement, from the law of the country where the arbitration took place.[19] The underlying concern is the parties' consent.

The rationale is straightforward. Arbitration is founded on the parties' agreement, and where a tribunal acts beyond the limits of that agreement, it produces an award that the parties never agreed to submit to arbitration. Still, courts have insisted that a serious change is needed. Trivial irregularities will not do, and several jurisdictions impose a requirement of prejudice over and above that.

3.3 Article V (2) (b)

Article V (2) (b) allows a court to refuse the recognition or enforcement of an arbitral award on public policy grounds. Unlike the ArticleV(1) grounds, a court can raise this issue on its own. Article V (2) (b) refers to the public policy "of that country." In practice, however, courts in most jurisdictions adopt an international, rather than a purely domestic, conception of public policy when considering the enforcement of arbitral awards. As a result, not every mandatory rule of the forum state is treated as part of its public policy for the purposes of Article V(2)(b). That said, the position is not entirely consistent across jurisdictions. Some courts draw a much clearer distinction between domestic and international public policy than others, leading to differences in the way the provision is applied. [17,18] In *Parsons & Whittemore*, the court held that this ground should be applied narrowly. Enforcement should be refused only if it would go against the forum state's most fundamental principles of morality and justice.[20]

Online ISSN: 3048-667X
CODEN (CAS, USA): JRLAB4
Impact Factor: 3.66

Nevertheless, certain aspects of procedural public policy have taken on substance over the years – violation of the right to be heard, an award procured by fraud, defects in the independence of the tribunal – have all come to be recognised under this heading.

A word of caution is necessary regarding the authorities relied on below. *ARIHQ* was decided under article 646(3) of the Quebec Code of Civil Procedure, *Yukos* under article 1065(1) of the Dutch Code of Civil Procedure, and *LaPaglia* and *Move* under section 10 of the Federal Arbitration Act. Each is a set-aside or vacatur decision rendered by a court at the seat, and none constitutes authority on Article V. They are cited here because they address the same underlying question: whether the tribunal exercised its own judgment. In addition, the annulment grounds considered in those cases are closely modelled on, or materially similar to, Article V (1)(d). Even so, the two inquiries are distinct. A court at the seat determines the validity of the award, whereas an enforcement court decides only whether the award should be recognised and enforced within its own jurisdiction. A refusal of enforcement does not invalidate the award; it simply leaves open the possibility of enforcement elsewhere.

4. COULD UNDISCLOSED AI USE TRIGGER ARTICLE V?

4.1 Article V (1) (b)

The key question under the due process ground is whether a party had a fair chance to present its case. When AI is used without being disclosed, it is not always clear whether this requirement has been breached. The party was allowed to present evidence, call witnesses and present its argument, nothing was denied to it during the proceedings themselves. This is the end of the analysis on a narrow view of the kind that was taken in Consorcio Rive.

That conclusion is too quick in one respect. Where AI has generated new material in the reasoning of the tribunal that the parties never had a chance to consider whether by taking an approach or viewpoint that a party didn't put forward it is a different, and well-established, prohibition – deciding on a basis the parties were never given the chance to address.

Here, the vice is not the tool, that's a risk pointed out by SVAMC Guideline 7, and it requires disclosing and allowing comment. It is the surprise. The objection would not be one bit different had the tribunal been sitting in its own library and decided on it without inviting comment. But non-disclosure compounds the issue as it is one moment in which the parties could have responded.

In *ARIHQ c Santé Québec*, the Superior Court annulled the arbitral award after finding that the

Online ISSN: 3048-667X
CODEN (CAS, USA): JRLAB4
Impact Factor: 3.66

key authorities cited by the arbitrator did not exist. The court concluded that, in substance, the arbitrator had delegated his decision making authority, resulting in a failure to follow the agreed arbitral procedure under article 646(3) of the Quebec Code of Civil Procedure. This provision is comparable to Article V(1)(d) of the New York Convention and Article 34(2)(a)(iv) of the UNCITRAL Model Law. The court did not base its decision on the parties' right to be heard. [9, 21]

The use of non-existent authorities raises a different concern. If an authority does not exist, the parties cannot examine it, challenge it, or make submissions on it. In such a situation, the problem is not the use of AI itself. Rather, it is that the decision is influenced by material that neither party had an opportunity to address, undermining the fairness of the arbitral process.

The investigation takes the form of three questions: did the AI output influence the tribunal's reasoning? Did it lie outside the arbitral record? And were the parties given an opportunity to comment on it? Where the output guided the reasoning, sat outside the record and the parties were afforded no opportunity to respond, Article V(1)(b) is called into play. The use of AI alone will not suffice.

4.2 Article V (1) (d)

When parties choose particular arbitrators, agree to a three-member tribunal, and require a reasoned award, they are choosing those individuals to decide their dispute. That is a fundamental part of the parties' agreement and one of the reasons they choose arbitration rather than litigation, where they cannot choose the judge.

If the tribunal transfers part of that decision-making role to someone or something else, it acts outside the parties' agreement. In that situation, Article V(1)(d) applies without any need to show that the proceedings were unfair.

Two refinements should be made. The first concerns cases in which the parties have made no express provision. In those circumstances, the implied expectation of personal adjudication may rest more securely on the second limb of Article V(1)(d), namely the law of the country where the arbitration took place, than on an implied term of the arbitration agreement itself. That is because most arbitration laws treat the arbitral mandate as personal. A separate issue is how delegation should be characterised. It may be viewed either as a defect in the composition of the arbitral authority or as a departure from the arbitral procedure. The distinction is significant because the former is generally the more difficult allegation to establish, whereas the latter is the approach adopted by the Québec Superior Court in *ARIHQ*.

Online ISSN: 3048-667X
CODEN (CAS, USA): JRLAB4
Impact Factor: 3.66

A useful comparison can be drawn with the role of a tribunal assistant. In the *Yukos* set-aside proceedings, the Russian Federation argued that the tribunal assistant had effectively acted as a "fourth arbitrator" because of the secretary's involvement in drafting the award. It claimed that the tribunal had improperly delegated a task that should have remained the personal responsibility of the arbitrators in breach of its mandate under Article 1065(1)(c) of the Dutch Code of Civil Procedure, which meant that the tribunal was irregularly constituted under Article 1065(1)(b). The Hague Court of Appeal rejected both grounds. [23] The court emphasised that the key issue was not who drafted the award, but whether the award reflected the tribunal's own independent judgment.

It should be acknowledged that *Yukos* does not lend unequivocal support to the argument advanced here. The Hague Court of Appeal rejected the delegation challenge and adopted a demanding standard, asking whether the award reflected the tribunal's own independent judgment. As a result, the comparison is more limited than it might initially seem. Its significance lies in recognising that the delegation of the adjudicative function is capable of constituting a legal ground of challenge, rather than suggesting that such a challenge will readily succeed.

A similar argument was raised in *LaPaglia v Valve*. The petitioner claimed that the sole arbitrator had used AI to draft the award and, by doing so, had exceeded his powers under section 10(a)(4) of the Federal Arbitration Act. The petitioner compared the situation to cases in which arbitral awards were overturned because an arbitrator had falsely represented their qualifications. However, the court did not decide whether the use of AI was improper. On 9 December 2025, the Southern District of California dismissed the amended petition on jurisdictional grounds, meaning that the AI-related objection was never considered on its merits. [10, 24]

There is a counter argument which may hold. This is the interpretation of AI as a drafting mechanism, like a word processor or a research database, and thus not requiring the party's consent. This type of framing is reasonably well-sustained at the assistance end of the spectrum. It breaks down at the delegation end because a generative model is not just a tool for the retrieval of the arbitrator's own reasoning, but a tool that generates reasoning which the arbitrator may use without forming their own judgment. In any event, the King County Superior Court in Washington had already confirmed the award.[24]

A second objection deserves closer attention. It has been suggested that Article V (1)(d) is concerned with the conduct of the arbitration rather than the form or content of the award. On

Online ISSN: 3048-667X
CODEN (CAS, USA): JRLAB4
Impact Factor: 3.66

that basis, challenges to AI-generated reasoning are said to fall more naturally within Articles V(1)(b) and V(2)(b), while Article V(1)(d), absent an agreed disclosure requirement, is not understood to impose any independent obligation of disclosure.[7]

That analysis is only partly persuasive. Taken to its logical conclusion, the first proposition is too broad. The composition of the tribunal and the manner in which it performs its mandate are themselves questions of how the arbitration is conducted, not of the form of the award. An arbitrator who does not personally decide the dispute has not conducted the arbitration in the manner contemplated by the parties, regardless of what the award ultimately looks like.

The position is different, however, in relation to disclosure. This article does not suggest that Article V (1)(d) creates a free-standing duty to disclose the use of AI. The point is more limited. A failure to disclose is not, in itself, the procedural departure. Its significance lies in its evidential value, both as an indication that such a departure may have occurred and as an explanation for why proving it is often difficult.

The matter with non-disclosure is compounded on two levels. Clearly, it takes away from the parties the information they need to raise any objections while the matter is still "live", and in most jurisdictions the failure to do so amounts to waiver, so this lack of information can be interpreted as consent which is never actually given. In substance, if the parties have agreed either rules or an informal resolution document (soft law) that call for disclosure, or if there is an agreed order of procedure on the use of AI, similar to the CIArb templates, where there is no disclosure, that is also a departure from the agreed procedure and arguably does not require any further characterisation to engage the ground.

4.3 Article V (2) (b)

Of the three grounds, the public policy exception is the narrowest. Courts have resisted the notion of using it to conduct a general examination of procedural regularity, even if a serious error of law is not enough to refuse recognition or enforcement on public policy grounds. This was the approach taken by the Quebec court in *ARIHQ*. The court rejected the public policy challenge because it could not review whether the arbitrator's legal reasoning was correct. Instead, it annulled the award because of procedural defects. [9, 21]

Why call it up, then, if that was the case? It is not about any one person; it is about the integrity of the institutions. The foundations of arbitral legitimacy are fairly simple: An actual, and accountable, human adjudicator has deliberated. Two awards may appear identical on their face while differing fundamentally in the way their reasoning was produceddeliberated by the tribunal in one case and generated probabilistically in the other. Yet the latter bears all the formal hallmarks of the former.

This is why cases involving fabricated arbitrator qualifications, undisclosed conflicts of interest, and awards obtained through fraud are the closest comparisons. In *Move, Inc v Citigroup Global Markets*, the Ninth Circuit found that Move's right to a fundamentally fair hearing had been prejudiced because the chair of the arbitral tribunal panel had falsely claimed to be a licensed attorney. Move sought vacatur under sections 10(a)(3) and 10(a)(4) of the Federal Arbitration Act. The Ninth Circuit partly reversed the district court's decision and remanded the case with instructions to enter judgment in Move's favour. [25] Although the facts are different, they all involve the same underlying problem: the parties gave their consent based on assumptions that later proved to be false. The position is not settled. Some commentators have taken the view that a lack of impartiality by an arbitrator or tribunal does not, without more, provide a ground for resisting enforcement under the Convention.[8]

Even with these exceptions, the threshold remains high. To meet it, there would likely need to be both deliberate concealment and a complete failure by the tribunal to perform its own role. In other words, none of the arbitrators would have written the award themselves, and the decision would have been based on material that was never disclosed to the parties. Fabricated authorities on such a scale could justify setting aside or refusing to enforce the award under both Article 34(2)(b)(ii) of the Model Law and Article V(2)(b) of the New York Convention. It would be better to consider Article V(2)(b) a last resort to be used only in extreme situations and leave to V(1)(d) to do the day-to-day work.

5. A PROPOSED FRAMEWORK

Enforcement courts are confronted with such arguments: They need more than a general suspicion of automation. Below are five factors which, if combined, can provide a working structure.

i. The purpose for which AI is being used.

Make the distinction between administrative and stylistic tasks and research, evaluative summarisation and development of reasoning. The first does not pose any problem at all. The final one is directly for the adjudicative function.

Online ISSN: 3048-667X
CODEN (CAS, USA): JRLAB4
Impact Factor: 3.66

ii. **Degree of reliance**.

Inquire about the influence of the output on the thinking process or just the way it is displayed on the page. The use of fabricated or unverifiable authorities strongly suggests that the tribunal relied on sources that did not exist. If the tribunal had actually examined those authorities, it would have discovered that they did not exist and could not legitimately support its reasoning.[9]

iii. **The knowledge or otherwise of the parties**.

Another important factor is whether the parties were aware of the use of AI. Disclosure gives the parties an opportunity to object, accept its use, or ask for the issue to be addressed while the arbitration is still ongoing. Where the applicable arbitration rules or a procedural order require disclosure, a party who fails to disclose the use of AI should not later be allowed to argue that the other party waived its right to object at the enforcement stage.

iv. Prejudice

An award should not be refused for an irregularity that made no difference to anything; in line with the Convention's pro-enforcement policy, the defect should have been capable of altering the outcome. The Superior Court in *ARIHQ* adopted the same approach. It held that departure from the agreed arbitral procedure must be significant and serious enough to undermine the integrity of the arbitral process. [9]

v. **Independent judgment**

The final issue, and in most cases the decisive one, is whether the tribunal itself made up its mind. This is the same question the Hague Court of Appeal considered in *Yukos* when examining the role of the tribunal assistant. [23] In most cases, if the answer is yes, no further enquiry is needed.

In combination, the structure helps to maintain the focus on the conduct of the arbitrator and not on the technology employed, and on the burden as outlined in the Convention. However, failing to disclose the use of AI cannot be ignored. If the tribunal did not tell the parties that it had used AI, the party resisting enforcement has no opportunity to examine or challenge its use. Article V(1) places the burden of proof on the party resisting enforcement, and that general rule should remain unchanged. However, where a tribunal has failed to disclose its use of AI, the court should be entitled to draw an adverse inference from that omission. In those

Online ISSN: 3048-667X
CODEN (CAS, USA): JRLAB4
Impact Factor: 3.66

circumstances, the party resisting enforcement should not be expected to meet the same standard of proving prejudice as would normally apply.

Two objections should be considered. The first is that Article V(1) expressly places the burden of proof on the party resisting enforcement. A judicially created inference might therefore appear inconsistent with that rule. The proposed inference does not change who bears the burden of proof. Instead, it affects how the court assesses prejudice where the resisting party cannot obtain the evidence needed to prove prejudice because the tribunal did not disclose its use of AI.

The second objection is more difficult. The failure to disclose the use of AI is the tribunal's responsibility, but the consequence of that failure may fall on the award creditor. That is a legitimate concern. However, the creditor participated in choosing and constituting the tribunal. More importantly, if undisclosed delegation has no evidential consequence, the parties' agreement that their dispute would be decided by the appointed arbitrators would have little practical protection.

The proposed framework also has a practical limitation. An enforcement court will normally have little evidence about how an award was produced apart from the award itself. In *ARIHQ*, the fabrications were visible from the reasons. Where AI has been used competently, there may be no similar indication in the award. The framework will therefore apply only in a limited number of cases, particularly where the award itself reveals something about the use of AI. This is a limitation, but it does not undermine the proposal. Without the framework, an enforcement court may have no practical way to examine whether undisclosed AI use affected the award.

6. CONCLUSION

The use of AI does not automatically make an arbitral award invalid. This is an important starting point. If a tribunal uses AI to organise the procedural history, translate documents, or improve the wording of an award, Article V is generally not affected. Courts should recognise this. Treating AI itself as a problem would only discourage arbitrators from being open about its use, reducing transparency rather than improving it.

The real issue arises when a tribunal relies on AI-generated reasoning without telling the parties. In that situation, the parties lose the opportunity to respond to material that may have influenced the tribunal's decision. The tribunal also departs from the agreed arbitral procedure without the parties' knowledge, and the parties' expectation that the case would be decided by the tribunal's own independent judgment is undermined. In such cases, Article V(1)(d) provides

Online ISSN: 3048-667X
CODEN (CAS, USA): JRLAB4
Impact Factor: 3.66

the strongest basis for refusing recognition or enforcement. Article V(1)(b) may also apply where the undisclosed AI-generated material comes from outside the arbitral record and affects the parties' right to be heard. Article V(2)(b) should be reserved for the most exceptional cases.

There is a legitimate concern that this approach could sit uneasily with the Convention's pro-enforcement structure. If enforcement courts begin examining how tribunals produced their reasoning, parties may also be encouraged to bring separate disputes about the way an award was drafted. That concern is precisely why the proposed framework is narrow. It is not intended to scrutinise every use of AI. The issue arises only when the tribunal's reliance on AI was both material and undisclosed, and even then the party resisting enforcement must show prejudice. Where the tribunal has disclosed its use of AI, or where the technology has played no role in shaping the tribunal's reasoning, the proposed approach has no application.

The decision in *ARIHQ* is unlikely to be the last case dealing with this issue. As AI becomes more common in arbitration, courts will have to apply a convention drafted in 1958 to technology that did not exist when it was written. It is therefore better to develop clear legal principles now rather than wait for courts to deal with these issues in future enforcement disputes.

REFERENCES

1. Gallagher N, Fanou M, Lehmann T. 2025 International Arbitration Survey: the path forward — realities and opportunities in arbitration [Internet]. London: School of International Arbitration, Queen Mary University of London / White & Case LLP; 2025 [cited 2026 Jul 29]. Available from:https://www.qmul.ac.uk/arbitration/media/arbitration/docs/White-Case-QMUL-2025-International-Arbitration-Survey-report.pdf
2. Silicon Valley Arbitration and Mediation Center. Guidelines on the use of artificial intelligence in arbitration. 1st ed. [Internet]. Palo Alto (CA): SVAMC; 2024 Apr 30 [cited 2026 Jul 29]. Part 3, Guidelines 6 and 7. Available from: https://svamc.org/wp-content/uploads/SVAMC-AI-Guidelines-First-Edition.pdf
3. Chartered Institute of Arbitrators. Guideline on the use of AI in arbitration (2025) [Internet]. London: CIArb; launched 2025 Mar 19, updated 2025 Sep [cited 2026 Jul 29]. Part IV; Appendices A–B. Available from: https://www.ciarb.org/media/bpndtcgu/guideline-on-the-use-of-ai-in-arbitration_updated-sept-2025.pdf
4. American Arbitration Association–International Centre for Dispute Resolution. AI-led arbitration rules [Internet]. New York: AAA-ICDR; amended and effective 2026 Feb 18 [cited 2026 Jul 29]. Available from: https://www.adr.org/media/rzthzgco/ai-led-arbitration-

Online ISSN: 3048-667X
CODEN (CAS, USA): JRLAB4
Impact Factor: 3.66

rules-2026.pdf

5. Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence (Artificial Intelligence Act) [2024] OJ L2024/1689, arts 50, 113; Annex III, point 8(a); recital 61.
6. Regulation (EU) 2026/1744 of the European Parliament and of the Council amending Regulation (EU) 2024/1689 (Digital Omnibus on AI) [2026] OJ L2026/1744 (published 24 July 2026, in force 27 July 2026).
7. Hayat MF, Azhar FH. Can AI-assisted arbitral awards survive enforcement under the New York Convention? Kluwer Arbitration Blog [Internet]. 2026 Apr 10 [cited 2026 Jul 29]. Available from: https://legalblogs.wolterskluwer.com/arbitration-blog/can-ai-assisted-arbitral-awards-survive-enforcement-under-the-new-york-convention/
8. Gielen N, editor. Debate: are AI-assisted awards enforceable under the New York Convention? Contributions by Ast F, Nappert S, Ortolani P. Kluwer Arbitration Blog [Internet]. 2026 Jul 13 [cited 2026 Jul 29]. Available from: https://legalblogs.wolterskluwer.com/arbitration-blog/debate-are-ai-assisted-awards-enforceable-under-the-new-york-convention/
9. Association des ressourcesintermédiairesd'hébergement du Québec (ARIHQ) c Santé Québec – Centre intégréuniversitaire de santé et de services sociaux du Centre-Sud-de-l'Île-de-Montréal, 2026 QCCS 1360 (22 Apr 2026).
10. Aceris Law. When arbitrators use AI: LaPaglia v Valve and the boundaries of adjudication [Internet]. 2025 Apr 19 [cited 2026 Jul 29]. Available from: https://www.acerislaw.com/when-arbitrators-use-ai-lapaglia-v-valve-and-the-boundaries-of-adjudication/
11. Meredith L, Thompson N, Greenaway O. AI in arbitration: institutional guidance and emerging developments [Internet]. London: Society for Computers and Law; 2026 Apr 22 [cited 2026 Jul 29]. Available from: https://www.scl.org/ai-in-arbitration-institutional-guidance-and-emerging-developments/
12. SCC Arbitration Institute. Guide to the use of artificial intelligence in cases administered under the SCC Rules [Internet]. Stockholm: SCC; 2024 Oct [cited 2026 Jul 29]. Available from:https://sccarbitrationinstitute.se/wpcontent/uploads/2024/12/scc_guide_to_the_use_of_artificial_intelligence_in_cases_administered_under_the_scc_rules-1.pdf
13. Vienna International Arbitral Centre. Note on the use of artificial intelligence in arbitration proceedings [Internet]. Vienna: VIAC; 2025 Apr [cited 2026 Jul 29]. Available from: https://www.viac.eu/wp-content/uploads/2025/04/VIAC-Note-on-AI-1.pdf
14. Consorcio Rive, SA de CV v Briggs of Cancun, Inc, 134 F Supp 2d 789 (ED La 2001).
15. Consorcio Rive, SA de CV v Briggs of Cancun, Inc, 82 F App'x 359 (5th Cir 2003)

Online ISSN: 3048-667X
CODEN (CAS, USA): JRLAB4
Impact Factor: 3.66

(unpublished).

16. Generica Ltd v Pharmaceutical Basics, Inc, 125 F3d 1123, 1129–30 (7th Cir 1997).
17. International Council for Commercial Arbitration. ICCA's guide to the interpretation of the 1958 New York Convention: a handbook for judges [Internet]. The Hague: ICCA; 2011 [cited 2026 Jul 29]. Available from: https://www.arbitration-icca.org/icca-guide-interpretation-1958-new-york-convention-handbook-judges
18. UNCITRAL Secretariat. Guide on the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958) [Internet]. Vienna: United Nations; 2016 [cited 2026 Jul 29]. Article V(1)(d). Available from: https://uncitral.un.org/sites/default/files/media-documents/uncitral/en/2016_guide_on_the_convention.pdf
19. Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958), 330 UNTS 3 (entered into force 7 June 1959), art V. Implemented in the United States at 9 USC §§ 201–208.
20. Parsons & Whittemore Overseas Co v Société Générale de l'Industrie du Papier (RAKTA), 508 F2d 969, 974 (2d Cir 1974).
21. Mayer Brown. Canadian court annuls arbitral award for delegation to AI, consistent with global trends [Internet]. 2026 May 13 [cited 2026 Jul 29]. Available from: https://www.mayerbrown.com/en/insights/publications/2026/05/canadian-court-annuls-arbitral-award-for-delegation-to-ai-consistent-with-global-trends
22. Hulley Enterprises Ltd, Yukos Universal Ltd and Veteran Petroleum Ltd v Russian Federation, Court of Appeal of The Hague, 18 Feb 2020, ECLI:NL:GHDHA:2020:234 (assistant / "fourth arbitrator" grounds under arts 1065(1)(b) and (c) DCCP rejected); Supreme Court of the Netherlands, 5 Nov 2021, ECLI:NL:HR:2021:1645 (partial set-aside on the fraud ground, remitted); Court of Appeal of Amsterdam, 20 Feb 2024 (fraud ground rejected); Supreme Court of the Netherlands, 17 Oct 2025 (further cassation appeal dismissed). The rejection of the "fourth arbitrator" grounds was not disturbed at any stage.
23. LaPaglia v Valve Corporation, No 3:25-cv-00833-RBM-DDL (SD Cal). Petition to vacate filed 8 Apr 2025 under 9 USC § 10(a)(3), (4); order granting motion to dismiss first amended petition for lack of subject-matter jurisdiction, 9 Dec 2025. See also Valve Corp v LaPaglia, No 25-2-06159-1 SEA (Wash Super Ct 2025) (award confirmed).
24. Move, Inc v Citigroup Global Markets, Inc, 840 F3d 1152 (9th Cir 2016) (No 14-56650, decided 4 Nov 2016).