5 CONCLUSION

This article presents and discusses the results of a study about the current use of combinations in international commercial dispute resolution. The study follows up the original study conducted by one of the article's authors in 2014-2015. The results of the original study suggested the existence of a link between the practitioners' legal culture and their use of the same neutral (arb)-med-arb. In particular, the result that diff neutral (arb)-med-arb emerged as the most common combination was attributed to the legal culture of the original questionnaire's participants with experience in combinations, the majority of whom practiced in Common Law Asia Pacific and Continental Europe. The aim of this follow-up study was to further test the hypothesis about the existence of a link between the practitioners' legal culture and their use of the same neutral (arb)-med-arb by involving in it dispute resolution practitioners practicing in East Asia.

This follow-up study involved a distribution of a questionnaire in electronic form and was conducted between March 2019 and January 2020. The fifty participants of the study comprised predominantly international dispute resolution practitioners from five countries/regions of the world. The largest group of the participants practiced in mainland China (72%).

A significant result to emerge from this study is that its participants have experienced combinations more frequently than the participants of the original questionnaire. In particular, about two-thirds of the participants of this study reported experience with combinations, while in the original questionnaire that was the case for about one-third of the participants.

The participants of the follow-up study had acted as mediators and arbitrators in the same dispute more often compared to the participants of the original questionnaire. About one-third of the participants with experience in combinations of this follow-up study reported experience acting as a dual role neutral. In the original questionnaire, this was the case only for 17.9% of the participants with experience in combinations.

In both studies, the participants clearly identified the most common combination. For the participants of the original questionnaire that was diff neutral (arb)-med-arb. According to the participants of this study, that is the same neutral (arb)-med-arb with a member of the arbitral tribunal acting as a mediator. This option was selected predominantly by the practitioners from mainland China. An important observation here is that compared to mediation by the sole arbitrator, mediation by only some members of a tribunal can reduce concerns associated with the same neutral (arb)-med-arb, particularly those related to the risk of arbitrator partiality.

In the original questionnaire, most often the participants experienced mediation before arbitration. This contrasts with the results of this study where the participants reported mediation after the hearing on the merits but before

issuing the award as the most recurrent timing of mediation in a combination. This option was particularly frequently chosen by the practitioners from mainland China.

The results indicating that the practitioners based in mainland China often use the same neutral (arb)-med-arb and that mediation tends to take place at a relatively late stage of arbitration are consistent with the views expressed in the literature and the findings of the previous empirical studies.

Notably, in both the original questionnaire and this follow-up study, a vast majority of the participants reported the use of caucuses in the mediation stage of a combination in all or the majority of cases. This result was not surprising in the context of the original questionnaire where most often the participants experienced diff neutral (arb)-med-arb. This is because caucuses raise no concerns if the mediation and arbitration stages are conducted by different neutrals. They are, however, problematic in the context of the same neutral (arb)-med-arb. Nevertheless, previous research including empirical studies demonstrates that the Chinese practitioners are used to arbitrators caucusing during mediation in the same neutral (arb)-med-arb, which is supported by the results of this follow-up study.

The most common outcome of a combination, as experienced by the participants of this follow-up study, is consent awards. This option was also most frequently chosen by the practitioners from mainland China, which indicates that the Chinese practitioners seem to extensively use a possibility offered by combinations to incorporate a mediated settlement agreement into a consent arbitral award, arguably enforceable worldwide pursuant to the New York Convention. This result, however, contrasts with that of the original questionnaire where recording the outcome of a combination in a mediated settlement agreement was by far the most popular option. Such difference in the results between the original questionnaire and this study supports the view that the demand for an enforcement mechanism for international mediated settlement agreements is not homogeneous around the world but subject to regional variations.

Overall, the results of this study provide further support to the hypothesis that the use of the same neutral (arb)-med-arb varies throughout the world and can be linked to the practitioners' legal culture.