ArbitralWomen Newsletter

ARBITRAL WOMEN — *Uniting and promoting women in dispute resolution*

www.arbitralwomen.org

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Inside Issue Nº 51

The Arbitration Pledge Achieves More Than 5,000 Signatories!

ArbitralWomen celebrates the many successes of the Equal Representation in Arbitration Pledge in its first 6 years, including its recent milestone of achieving more than 5,000 signatories!

This is the final Newsletter edition of the 2020-2022 ArbitralWomen Board term. We take this opportunity to thank all Board members for their contributions during the last two years and hope that the members rotating off the Board will stay closely involved in ArbitralWomen's activities. We welcome the continued dedication of continuing Board members and look forward to welcoming new Board members as of 1 July 2022!

We also look forward to celebrating ArbitralWomen's 30th Anniversary in 2023! Stay tuned for details!

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President's Column

Dana MacGrath, ArbitralWomen President and Independent Arbitrator

In this edition of the ArbitralWomen Newsletter, we celebrate the many events that took place to honour **International Women's Day 2022** and **Women's History Month**. We also feature reports on many arbitration and ADR conferences and webinars throughout the first quarter of 2022, including the 75th session of **UNCITRAL's Working Group II (Dispute Settlement)** and highlights of Paris Arbitration Week 2022. We also include an interview by ArbitralWomen member **Svenja Wachtel** of ArbitralWomen President **Dana MacGrath**, released on IWD2022, on recent developments and initiatives at ArbitralWomen.

A new special feature of this Newsletter is the **Young ArbitralWomen Practitioners (YAWP) Member Profile Series**, launched by the 2022 YAWP Steering Committee, leading with an interview by YAWP newsletter team member and former YAWP Steering Committee member **Aanchal Basur** of YAWP Steering Committee member **Manini Brar**.

This is the final edition of the Newsletter for the 2020-2022 ArbitralWomen Board term. Throughout these past two years, the ArbitralWomen Board has faced unique challenges due to the global pandemic. Board members have supported each other through very difficult times, taking on the work of their colleagues to allow those sick, or grieving the loss of loved ones, to take personal time to privately process excruciating developments in their respective lives. It was inspiring to see some of the newest members of the ArbitralWomen Board step up to help others and take over their duties. **'Stronger together' was a theme throughout the 2020-2022 Board term**. I personally wish to thank each Board member who raised her hand and dedicated additional time to help others when they needed it most.

In the first quarter of 2022, there have been some inspiring bright moments worthy of note outside the world of arbitration and ADR, although sadly against a dark backdrop of war in Eastern Europe. In the United States, the first black woman, **Ketanji Brown Jackson**, was nominated by President Biden to the US Supreme Court to replace retiring Justice Stephen Breyer and confirmed by the US Senate on 7 April 2022. She was born in Washington, DC, attended both Harvard University and Harvard Law School, and served as a federal court appellate judge last year on the U.S. Court of Appeals for the District of Columbia Circuit after spending eight years as a federal district court judge in Washington, DC. In its long history, only five women have served on the US Supreme Court prior to Justice Jackson's appointment, including the legendary former US Supreme Court Justice **Ruth Bader Ginsburg**, whose passing was honoured by the world and ArbitralWomen in the fourth quarter of 2020.

The world honoured the passing of former US Secretary of State **Madeleine Albright** on 23 March 2022. Like Justice Ginsburg, Madeleine Albright, a first-generation immigrant to the US in 1948 who became a citizen in 1957, was a female trailblazer and a fierce supporter of women. One of her arguably most famous quotations is repeated by many: 'There is a special place in hell for women who don't help other women'.

Madeleine Albright made women's issues central to American foreign policy, observing that 'societies are more stable if women are politically and economically empowered'. Similarly, she considered women's issues central as opposed to auxiliary, explaining that women 'are more than 50% of almost every country in the world' and 'are not recognised properly. It's something that has to be on the international agenda all the time'.

As ArbitralWomen supports the next generation in arbitration and ADR, it is worth reminding the rising new female members of our international dispute resolution community of Madeleine Albright's admonition: 'It took me quite a long time to develop a voice, and now that I have it, I am not going to be silent'. ArbitralWomen aims to support our members in developing and using their voices.

Please enjoy this final edition of the ArbitralWomen Newsletter published during the 2020-2022 term. Many thanks again to ArbitralWomen Newsletter Co-Directors **Erika Williams** and **Maria Beatriz Burghetto** and our entire Newsletter team for their hard work to make each of our newsletters possible.

It has been an honour to serve as President of ArbitralWomen since 1 July 2018 and I look forward to ArbitralWomen's continued success when I step down on 30 June 2022.

Dana MacGrath
ArbitralWomen President

Digital Coffee Break in Arbitration

Interview | Dana MacGrath

Welcome to the new interview of 'Digital Coffee Break in Arbitration' by **Svenja Wachtel**. I am an attorney and arbitrator in the field of international arbitration and the founder of Digital Coffee Break in Arbitration, an initiative creating a debate around digital transformation in international arbitration. In this series, I discuss the latest trends in the field, covering topics such as the use of technology, digital transformation, and digitalization. Digital Coffee Break in Arbitration invites you to grab a drink, sit back and enjoy first-hand insights from General Counsel, arbitrators, legal scholars and other practitioners from all over the world of international arbitration.

Today will be a special edition for the International Women's Day 2022. And who would be better equipped but the fantastic **Dana MacGrath**, an independent arbitrator at MacGrath Arbitration based in New York City. Prior to starting her own practice, Dana served as Legal Counsel and Investment Manager at Omni Bridgeway and was a partner in the international arbitration group at Sidley Austin LLP. She also served as an international arbitration practitioner and arbitrator at Allen & Overy LLP and O'Melveny & Myers LLP and started her legal career in the litigation department at Sullivan & Cromwell.

Dana has been recognized as a leader in international arbitration in various directories and she is active within the international arbitration field across arbitral institutions and organisations. Dana is a committed leader in the diversity and inclusion space and holds several positions. Among them is her positon as President of the Board of Directors of ArbitralWomen since 2018, after having joined the Board in 2016. Today, we will talk about ArbitralWomen in the digital age.

#BreakTheBias
International Women's Day 2022

Thanks so much for joining me, Dana! When knowing that I would inter view you, it was difficult to decide where to put the focus because there is so much I want to talk about. Looking at the calendar, March 8 is around the corner, which means it is International Women's Day again, so today we will concentrate on your role as president of ArbitralWomen. Before going into the details, let us start at the very beg inning: Can you briefly describe the purpose of and goals behind ArbitralWomen?

Svenja, it is a pleasure to join you today. I first want to congratulate you for taking the initiative to launch Digital Coffee Break in Arbitration. It is a fabulous platform that brings the arbitration community closer together. I am so impressed by the many interviews you have conducted. It is inspiring to see you investing so much energy in helping others in the arbitration field.

ArbitralWomen is similarly focussed on helping others in the arbitration community. ArbitralWomen seeks to empower and promote the advancement of women in arbitration and other forms of alternative dispute resolution (ADR). The goals of ArbitralWomen include promoting the role and visibility of women in arbitration and empowering women to advance in arbitration through mentoring, training, publishing, and networking opportunities. ArbitralWomen seeks to bring women in arbitration and ADR together to support each other professionally and participate in our various programmes.

What does your role as President of ArbitralWomen involve?

As President of ArbitralWomen, I am the official spokesperson for ArbitralWomen, oversee all our various programmes and initiatives together with the Vice President, and additionally perform certain roles that any member of the Board might perform — for me it is leading the ArbitralWomen News Committee and serving on the Editorial Board of the Newsletters (for which I also write the President's Column) and serving as a North America Regional Events Director. So, as President, I am responsible for leadership of the organisation in addition to some 'usual' Director roles that any Director on the Board performs. It is very rewarding to lead an organisation dedicated to promoting women and diversity in arbitration and ADR.

Dana MacGrath

You are the President of ArbitralWomen since 2018 and have guided ArbitralWomen through the pandemic. What were the biggest challenges you faced during this time?

It is interesting that you ask about the challenges I faced as President guiding ArbitralWomen through the pandemic, as I have never been asked that before by anyone — in retrospect, it is interesting to reflect upon the challenges associated with leading ArbitralWomen through such a drastic time in world history.

One of the first challenges I faced was whether and when to terminate all ArbitralWomen in-person events. I took this decision quickly at the start of April 2020. In fact, ArbitralWomen was one of the first organisations to formally shut down in-person events globally. Since we hold events all over the globe, and health and safety conditions were changing rapidly in different places, we opted for a universal approach to terminate all in-person events until the scope and impact of the pandemic on professional activities could be better understood. Shortly thereafter, the entire world moved to virtual or remote events.

When terminating all in-person events, how did you ensure that the members could still make the most of the various programmes offered by ArbitralWomen?

In response to the need to shut down in-person events, we directed our energy to offering our programmes virtually. We adapted our mentorship and parental mentorship programmes to succeed on a virtual platform. We increased our social media and electronically transmitted news, such as our News Alert emails, our News Page on which we post articles by Directors and members about diversity and substantive arbitration topics, and our Newsletters.

So, in the first half of 2020 (which was the end of the 2018 ArbitralWomen Board term), we focussed less on organising events and redirected our efforts to offering our substantive programmes (such as our various mentoring programmes) virtually, the launch of ArbitralWomen Connect, and reporting on virtual arbitration and ADR events organised by other organisations.

We also launched a virtual campaign in the first half of 2020 'Diversity is Equally Important for Virtual Events' at the suggestion of one of our members. We invited other arbitration organisations to join the campaign by adding their logo to our News Page article on the campaign, or to reiterate the message in their own way, to encourage the arbitration community to collectively remediate the egregious under-representation of women in virtual events in the beginning of the pandemic. By the end of 2020, we saw significant improvement in the diversity of speakers at virtual events.

Finally, in the second half of 2020 after the election of the 2020 Board, we started organising virtual ArbitralWomen events in addition to supporting virtual events organised by others and continuing our many other programmes.

There must have been situations, in which the Board members were – for whatever reason – not in the position to dedicate the energy and time needed for the role as a Director of ArbitralWomen. How did you address this challenge during the pandemic?

A challenge that was accentuated during the pandemic was managing interrupted workflow when one or more of our Board members became temporarily unavailable due to sickness or bereavement leave. I instituted a policy for the pandemic that any Director could privately tell me or a member of the Executive Committee that she needed a short leave (and provide a time estimate) due to a private matter (such as sickness or a death in the family), and we would simply inform the Board that the Director was taking a short personal leave without sharing the reasons to respect her privacy. That left an awkward challenge of filling the Director's role(s) during the absence. However, a handful of amazing 2020 Board members raised their hand to take on additional roles to cover the work of those who were absent. I have tried to recognise and honour the extra effort made by those Board members who selflessly took on the role of others. Ironically, several of those Board members who went the extra mile are mothers or caregivers of young children with no childcare and working under extremely difficult circumstances. The expression 'the more you have to do, the more you get done' was never truer than in 2020 and 2021 for ArbitralWomen!

The reallocation of work during the pandemic led to a reorganisation of the roles on the Board to modernise the Organisation. Now the Director of Marketing and

'By the end of 2020, we saw significant improvement in the diversity of speakers at virtual events'.

'I believe professional digital communities are here to stay'.

Sponsorship does much of what was previously handled by the Events team. Now one Global Events Director takes the lead with the global arbitration weeks and events; the other Global Events Director focusses on organising events in emerging markets to expand ArbitralWomen's presence globally (since ArbitralWomen already has Regional Events Directors around the world in the places where arbitration events are held regularly). In sum, our responses to the challenges posed by the pandemic have improved our governance and operating policies. This is buttressed with our more regular, now monthly (virtual) Board meetings. I believe ArbitralWomen will emerge stronger from the pandemic, having met these challenges with responses that include organisational and governance changes that will endure beyond the pandemic.

Did you see a rise of interest in ArbitralWomen during the pandemic and if so, why do you think this is the case?

Yes, there definitely was a surge of increased interest in joining ArbitralWomen and members seeking to get more involved or maximise the ArbitralWomen platform for their individual career advancement. Ambitious members of ArbitralWomen were focussed on trying to not lose ground professionally during the pandemic and took every opportunity to speak at virtual events, write articles and participate in new initiatives. This actually inspired the title of our September 2020 Newsletter — 'ArbitralWomen Members are Thriving in a Virtual World!'.

Also, during the pandemic, ArbitralWomen members asked us to promote their (virtual) speaking engagements more than ever before. This is partly why we needed to reorganise the workstreams and develop more robustly the role of the Director of Marketing and Sponsorship. Members asked ArbitralWomen to promote their promotions, achievements, and professional moves much more during pandemic than previously. This required coordination among the ArbitralWomen Marketing team, News team and Social Media team. The unity of the Board has been instrumental to ArbitralWomen's success during the pandemic. All of this has contributed to the rise of interest in ArbitralWomen by members and ally organisations.

What are your thoughts on the need for a digital community such as ArbitralWomen as we continue through the Covid-19 pandemic era and how will this change when we are 'back-to-normal'?

I believe that digital communities and platforms are going to continue to have substantial relevance to all professionals after the pandemic era is behind us.

Even before the pandemic, many women realised that to advance internally at a firm or company, it was important for women to develop their external professional profile and network. With family responsibilities, women had no choice but to figure out how to maximise digital platforms. When the pandemic hit, men appeared to take more interest in digital communities and platforms. Now, both men and women are active on social media and will continue to be after the pandemic. I believe professional digital communities are here to stay.

ArbitralWomen has a variety of goals. One of ArbitralWomen's purposes is to 'promote and publicise the activities of ArbitralWomen and its Members through social media, digital communication and publications'. How has this field evolved over the years?

ArbitralWomen started promoting the activities of the organisation and its members through its Newsletter and website. As the use of digital communications increased, we started sharing promotional information through our News Alerts, our News Page, our Members' News Page and on social media through our LinkedIn and Twitter handles.

Our social media team republishes most of our promotional material about ArbitralWomen activities and its members that is first shared through News Alerts and on our website. Our social media team also promotes our members' speaking engagements and events that ArbitralWomen sponsors or serves as a supporting organisation. This is part of the attraction of ArbitralWomen membership – that we publish about our members on multiple platforms for maximum visibility.

It seems like many new (digital) initiatives were started during the pandemic by ArbitralWomen members. Why do you think that so many women come up with new ideas so — as it seems — effortlessly?

It is striking how many new digital and other initiatives were launched or co-launched by ArbitralWomen members during the pandemic — such as Mute Off Thursdays, Digital Coffee Break in Arbitration, ArbitralWomen Connect, Careers in Arbitration, Tag Time, Racial Equality for Arbitration Lawyers, Campaign for Greener Arbitration, ARBinBRIEF — and we were excited to promote those activities.

I think the trend that such initiatives were launched primarily by women was a natural extension of women having already been more digitally connected prepandemic to be able to be active and professionally visible during child-rearing years when it may be harder as a woman to attend in-person conferences and travel long distances for non-client work.

From the outside, the launch of a digital or other initiative may appear effortless, but I am sure that those women who launched programmes during pandemic invested 100s of hours to do so, probably late at night and on weekends after their full-time job responsibilities of the day or week were completed. Leadership roles with existing organisations require similar significant time commitment. Some of the ArbitralWomen Board members devote many 100s of hours a year to their Board work.

What kind of digital initiatives by ArbitralWomen members stood out to you and how do these initiatives foster the advancement of women?

There were so many impressive digital initiatives launched by ArbitralWomen members, some of which are mentioned above, it is hard to single out those that stood out. That said, the new trend of weekly or regular short digital programming is very effective, such as Mute Off Thursdays, a digital model that is limited to 30 minutes and meets weekly.

The first season of Mute Off Thursdays really broke new ground. I personally found it very intriguing and inspiring. During the pandemic, four women joined together to organise a weekly 30-minute gathering and substantive arbitration programme. Each programme was delivered by women for women. The co-founders took turns serving as host of the weekly programme, demonstrating teamwork, the importance of sharing work equally, and the absence of hierarchy. It was quintessentially female. Attendees looked forward to Thursdays and were excited to attend sessions and see their colleagues from whom they had been distanced due to the pandemic. The 'chat' function was filled with best wishes to colleagues across the globe. Each Thursday became a 30-minute session of female networking, knowledge-sharing, and being part of a supportive community.

I don't mean to confuse anyone by discussing Mute Off Thursdays in the past tense — Mute Off Thursdays is very much alive and well, and has spawned a successful 'Young Mute Off Thursdays' programme as well. Again, the lack of hierarchy among the co-founders and hosts is emblematic of an organisation launched and run by women.

In general, how important is digital transformation to achieve equality and diversity in international arbitration and to what extent can digital tansformation support equality?

Digital platforms are very important to achieving equality and diversity in international arbitration. This is most recently demonstrated by the launch of Racial Equality for Arbitration Lawyers (R.E.A.L.) in the midst of the pandemic. It has operated exclusively on digital platforms.

ArbitralWomen was the first to publish about the launch of R.E.A.L., which formally launched on 18 January 2021 — Martin Luther King Jr. Day in the USA — with a virtual programme at both 9:00 am ET and 5:00 pm ET in order to reach virtual audiences in all time zones. The R.E.A.L. launch events were inspiring and widely reported, including by Kluwer Arbitration Blog, the Dispute Resolution Section of the American Bar Association, and The Impact Lawyers.

In its first year, R.E.A.L. facilitated approximately 70 scholarships to empower attendance at arbitration events by diverse young talented lawyers who otherwise would have been unable to attend due to financial constraints. R.E.A.L. already has appointed a number of committee chairs and vice-chairs and ambassadors to organise R.E.A.L. programming and share information about R.E.A.L. broadly. I believe R.E.A.L. is a 'real' example of the extent to which digitalisation can support equality.

'Digital platforms are very important to achieving equality and diversity in international arbitration'.

Do you see the reduced travel opportunities as a chance or rather as an obstacle for women to become a speaker when it is not required to physically join a conference?

The increase of digital programmes will provide more opportunities for women to be speakers than if they were required to physically attend, for both practical reasons (family responsibilities) and cost issues (more women are independent practitioners or with smaller firms due to the pipeline leak at large firms).

You are regularly asked to speak at conferences and seminars. How do you feel personally when talking in front of a camera instead of in a room filled with people?

I prefer to speak to a live audience, but I feel very comfortable delivering remarks virtually and participating virtually in hybrid events. I enjoy trying to make the most of the virtual platform, adding useful reference links in the chat contemporaneously when speaking about a topic. Additionally, the virtual platform makes it possible to 'be' in multiple parts of the world on the same day, which is particularly helpful for me as President of ArbitralWomen during Women's History Month to speak at several events on that day, or to speak at overlapping arbitration weeks in different cities.

That said, I love to travel (as we all do in the arbitration field) and to speak to a room filled with people, so hope to be able to do that again soon!

If someone wants to support the involvement of women in arbitration — find female speakers for a programme, or learn about well-qualified female arbitrators — what resources can someone find on the ArbitralWomen website?

Many aspects of the ArbitralWomen website can assist someone looking for female speakers or female arbitrators. Our members directory can be searched using the dropdown search criteria to find women with certain language skills, training, or business experience.

Our webpage dedicated to News about Members is also a valuable way to see a virtual collage of talented women from all different parts of the world. We limit the description of the women to approximately 100 words so its easily digestible and a great way to learn about women who have experience you might not have thought was relevant to your programme or arbitration but now may be an asset to consider.

So, when people say, 'there are no female arbitrators' or ask, 'where can I find female arbitrators?,' or 'where can I

'...the virtual platform makes it possible to 'be' in multiple parts of the world on the same day...'

find lead female counsel?', or 'where can I find more female speakers for a programme?', please encourage them to visit the ArbitralWomen website!

Finally, we have networking events, which are great opportunities to meet our members and develop professional contacts. During the pandemic, we often have a substantive virtual programme followed by virtual networking breakout sessions. With in-person programmes, we make a point of having a networking reception or meal associated with the event.

Finally, anyone can reach out to ArbitralWomen to ask for assistance in finding qualified women for a specific role in arbitration and ADR, whether as counsel, arbitrator, mediator, expert, ombudsman, webinar speaker or another role. We are always happy to help!

Thank you for the opportunity to discuss these topics today. I enjoy reflecting on my four years as President of ArbitralWomen during one of the most turbulent times in modern history due to the pandemic during which, amazingly, we achieved substantial progress toward gender parity and diversity in arbitration. Additionally, during the pandemic, we successfully modernised the governance of ArbitralWomen and adopted new By-Laws in early 2022 to reinforce and support the modern approach of the organisation going forward. I feel that perhaps this is my most important legacy for ArbitralWomen as we approach our 30th anniversary — having implemented governance structures and policies to help ensure modern and efficient operations for ArbitralWomen for the years to come after I step down as President on 30 June 2022.

Thanks so much for your time Dana! It was an absolute pleasure talking to you and getting first-hand insights.

'Thank you for the opportunity to discuss these topics today. I enjoy reflecting on my four years as President of ArbitralWomen during one of the most turbulent times in modern history due to the pandemic during which, amazingly, we achieved substantial progress toward gender parity and diversity in arbitration'.

— Dana MacGrath, ArbitralWomen President, 1 July 2018-30 June 2022

YAWP Member Profile Series

Manini Brar

Consultant, Investment Division, DEA, Ministry of Finance, Govt. of India

Manini Brar is enrolled as an Advocate in India and a Solicitor of England and Wales, United Kingdom. A Commonwealth Scholar, she specialised in Public International Law at the University of Cambridge (LL.M.). Her legal journey began as an Associate at Luthra & Luthra Law Offices in New Delhi before working as a litigator with Adv. Rajashekhara Rao in the High Court of Delhi. She found her way into arbitration as an intern at the ICC, Hong Kong, where she was subsequently appointed as Deputy Case Counsel.

She currently holds the post of Consultant, Investment Division, DEA, Ministry of Finance, Government of India, and advises the Government on the review / negotiation of international investment agreements. The Ministry of Finance is a nodal ministry for issues related to international investment law within the Government of India.

She spoke to the YAWP Newsletter Team about her experience in international arbitration and tips and tricks for fellow young practitioners.

Hi Manini. Thank you so much for taking the time to speak with us. First things first, we need to ask you the most important question of this interview. Are you a dog or a cat person?

I'm a huge dog person! I have a dachshund named Kakaji (*means small boy in Punjabi*). I live in Delhi with Kakaji and my husband.

What made you levitate towards the legal profession and arbitration?

The decision to do law was a natural consequence to being a good orator and a passionate debater. In those days, good orators got into either journalism or the legal field. As for my transition into arbitration, the best way to describe it would be to say that it is something that happened to me rather than me pursuing it! Starting on a broad spectrum of subject-matters, while gaining experience and knowledge, helped in narrowing it down to arbitration. It's been quite an experimental yet fulfilling journey so far.

After obtaining your law degree in India, you moved to the United Kingdom to study at Cambridge. How was that experience?

I think the highlight of my time in Cambridge was getting to connect with some excellent people. I was lucky to be part of the last batch of students that had the opportunity to be taught by Prof. James Crawford before his appointment to the ICJ. He would come into class and make humorous jokes all while teaching us some complex international law concepts which one couldn't find in any textbook; he was a truly excellent professor to have. Furthermore, the students there were extremely well-rounded individuals, so incredibly smart and passionate about their interests outside their profession. I think having such interests is so necessary because it develops your personality and allows you to connect and network with people on topics other than just professional experience.

Have you had the benefit of mentorship? What are your views on mentorship?

The support that comes with having mentors is great. Personally, I feel that, although it is an important part, I don't think lack of it can be extremely disadvantageous to a person's career. It can mean that a person might take longer to reach their goals, compared to someone who has access to a senior practitioner, but they will still make it.

That being said, the current legal culture in India is fantastic as the excellent and well–established practitioners between the ages of 35-50 are extremely approachable and willing to help. This is where organisations like ArbitralWomen become crucial, because they foster a community and allow inter-jurisdictional discourse and dialogue.

As a woman involved in arbitration for a substantial amount of time, have you observed any changes in how people perceive women in arbitration roles in your jurisdiction?

One cannot deny that there are very real challenges that you will face just by being a woman. But that being said, it is important to first identify as a lawyer and evaluate your strengths and weaknesses at your profession. Sometimes, one might be penalised just because of one's gender, but there

might be other reasons for poor performance in a particular case. These other reasons are what we have to focus on and introspect about, because these are the things we can fix and improve upon. Furthermore, often when women who have faced challenges in their developmental years become seniors, they tend to become overly sensitive to their professional working environment. At that point, it is important to realise that one has to do right by their juniors and colleagues, irrespective of the kind of experiences one has personally faced.

What should a young arbitration practitioner do to build their profile? Snippets of advice for our younger members?

The initial stages of your career should be focussed on starting small, while creating a solid foundation, before moving to more complicated topics, such as international arbitration. One has to get over the anxiety and insecurity when they see successful seniors or other colleagues who may have achieved a lot in their career. I think the trick is to take it slow and focus on gaining relevant experience, instead of trying to do everything possible at a premature stage. For instance, there is a great Young Professionals Programme with the Department of Economic Affairs, in India, which is open even to freshers or practitioners who have just finished their LLMs. This is a great way to get into the subject-matter of Investor-State Dispute Settlement and get some solid experience on the same in India.

Another piece of advice would be to ensure that when reaching out to professors or seniors, the approach be properly structured and customised as to what you seek from them. You may speak about a particular thing that is commonly aligned between both of you, a common interest in an area of law, admiration for a particular article they have written, etc., which makes it difficult for the other person to ignore you.

Interviewed by Aanchal Basur, ArbitralWomen / YAWP member, Partner at AB Law, New Delhi, India

UNCITRAL Working Group II (Dispute Settlement) 75th session, from 28 March to 1 April 2022, in New York, USA and remotely

The 75th session of the UNCITRAL Working Group II (Dispute Settlement) (WGII) took place from 28 March to 1 April 2022 as a hybrid event, with participants present in person at the UN Headquarters in New York, and others attending online. Unlike previous occasions, this session was open for public registration, enabling interested organisations and individuals to attend, apart from the observers. The session was designed as a colloquium and 'brainstorming' on the possible path forward for the work on dispute settlement.

The discussions unfolded thematically as follows:

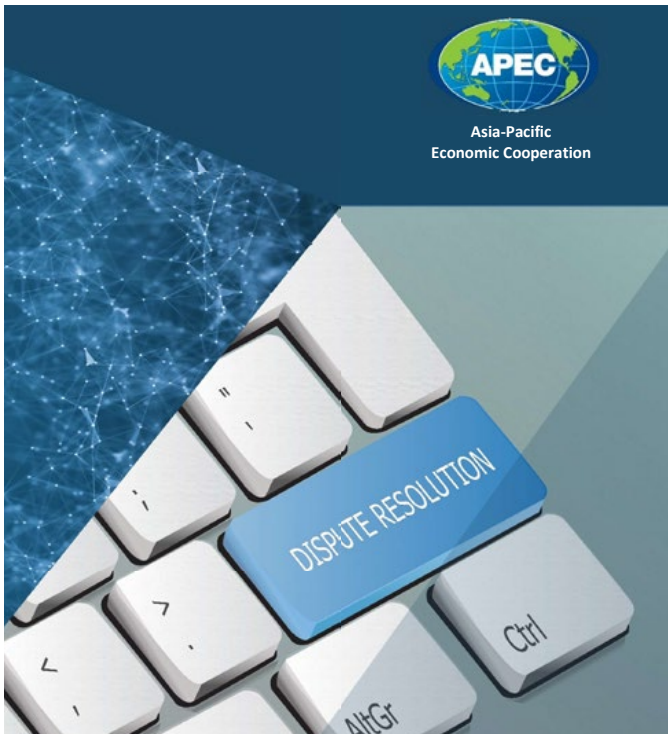
1. Legal issues relating to dispute resolution in the digital economy (DRDE), including platforms for online dispute resolution (ODR) (days 1 and 2),
2. Issues related to adjudication and technology-related dispute resolution (days 3 and 4), and additional discussions, roundtable and summary of deliberations (day 5).

The colloquium was organised into two 2-hour sessions each day, that included moderated presentations, followed by input from the delegates and other participants. This report summarises the content of the discussions, while the full programme, moderators and speakers are listed on the WGII website. Presenters included ArbitralWomen members, such as **Stephanie Cohen**, **Yasmine Lahlou**, **Lindy Patterson**, **Rekha Rangachari**, **Kim Rooney**. The presentations of the individual speakers are also available in full here.

Fahira Brodlija

The discussions of the WGII were structured around the work and analysis conducted by the UNCITRAL Secretariat, several delegations and observer organisations, including in particular:

- A/CN.9/WG.II/WP.222 – Stocktaking of Developments in Dispute Resolution in the Digital Economy: Submission by the Government of Japan
- A/CN.9/WG.II/WP.223 – Access to Justice and the Role of Online Dispute Resolution: Submission from Inclusive Global Legal Innovation Platform on Online Dispute Resolution
- A/CN.9/WG.II/WP.224 – Draft Provisions for Technology-related Dispute Resolution
- A/CN.9/WG.II/WP.225 – Settlement of Commercial Disputes: Adjudication
- A/CN.9/1064/Add.4 – Legal issues related to the digital economy – dispute resolution in the digital economy



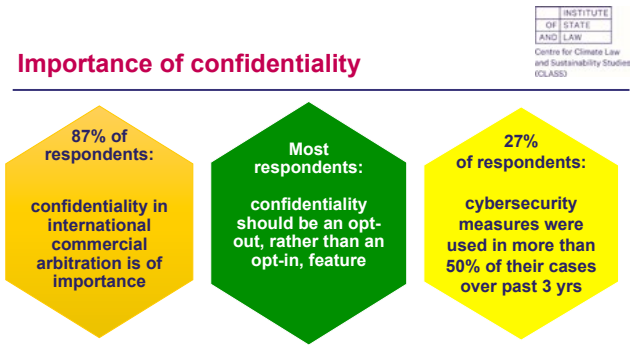
A. Days 1 and 2 (28 and 29 March 2022) Legal issues relating to dispute resolution in the digital economy (DRDE) and online dispute resolution (ODR)

The discussions of the first two days were dedicated to legal issues related to the digital economy and ODR. The sessions on the first two days were moderated by **Anna Joubin-Bret**, Secretary of UNCITRAL and **Jae Sung Lee**, WGII's Secretary.

Following the presentation of the Overview of the DRDE Stocktaking Project, the speakers highlighted various resources and initiatives that explore the role and legal implications of technology in dispute resolution, particularly with regards to access to justice and due process.

ArbitralWomen member Kim Rooney presented the Study of the Global Impact of the Covid-19 Pandemic on Commercial Dispute Resolution and Relevant Legislation, that traced the developments in 23 jurisdictions, temporary and permanent trends, as well as existing concerns and areas for intervention.

Other speakers introduced a range of platforms offering online dispute resolution mechanisms, from contract-based governance to platforms offering a centralised system with operators. They also provided a critical perspective of the UNCITRAL Technical Notes on ODR, as well as the APEC ODR Collaborative Framework as starting points for further discussions in this area.



B. Days 3 and 4 (30 and 31 March 2022) Adjudication and technology-related dispute resolution

Days 3 and 4, dedicated to adjudication and technology-related dispute resolution, were moderated by **Judith Knieper**, UNCITRAL Secretariat and Jae Sung Lee. Adjudication was discussed as a means to the efficient resolution of disputes in long-term contracts and a means to ensure provisional enforcement of decisions. **JG Morallos** presented the perspectives on adjudication from the Philippines.

The discussion then turned to technology-related dispute resolution, with a presentation of Draft Provisions on Technology-Related Disputes on the number of arbitrators and appointment of neutrals and on confidentiality. There was a detailed discussion on the procedural aspects of the various draft provisions and their possible practical implications. In particular, delegates and speakers discussed the nature of the proposed rules, their interaction with the existing normative framework for international arbitration and their incorporation into existing and new arbitration clauses.

C. Day 5 (1 April 2022) Roundtable discussion

The final day of the WGII session was dedicated to the summaries and roundtable discussion of the key conclusions, moderated by **Andrés Jana**, WGII's Chair. Some of the main takeaways from the session was the importance of ODR for MSMEs and small claims, as well as the blurring of the lines between consumers and other actors in e-commerce platforms, which indicates that the landscape of ODR has evolved even more rapidly than expected.

Throughout the session, delegations took the floor to express general support for the work that has been done in ODR and to encourage continued efforts in its development, especially towards developing normative solutions. There were calls for rules that would address enforcement issues, either by means of built-in enforcement mechanisms or a link to the international enforcement mechanisms through the New York Convention. In addition, delegates invited further consideration on equitable access to justice through ODR and the importance of collecting and analysing data on the use of ODR.

The 76th session of UNCITRAL Working Group II is tentatively scheduled for 10-14 October 2022 in Vienna.

Submitted by Fahira Brodlija, Legal advisor, GIZ Bosnia and Herzegovina

Reports on Events

ARBinBRIEF Season One, Episode 6 on Bifurcation, on 12 January 2022, by Webinar

ARBinBRIEF is a new initiative launched in October 2021 that offers practical video guides on handpicked arbitration topics while showcasing diverse arbitrator talent. During its first season, there are ten 30-minute episodes, each featuring two arbitrators.

Episode 6 took place on 12 January 2022, featuring ArbitralWomen members Céline Greenberg (Partner, Mayer Greenberg International Arbitration, Paris) and Dr. Emilia Onyema (Professor at SOAS University of London), moderated by Iuliana Iancu (Partner, Hanotiau & van den Berg, Brussels).

The topic of this episode was bifurcation. The speakers made the following points:

Key considerations for bifurcation

1. Efficiency is not only about time and costs, but also about the way a tribunal can work through the issues to be decided. Bifurcation can simplify a tribunal's work.
2. A tribunal should not disregard the parties' informed choice on bifurcation in an attempt to be proactive, but rather make sure that the parties fully understand the consequences of bifurcated proceedings.
3. Bifurcation always requires a case-by-case analysis of the risks and benefits of splitting the proceedings.
4. Some degree of analysis of the likelihood of proceedings continuing after the bifurcated phase is always necessary, even if prejudgment is to be avoided.

When should proceedings be bifurcated?

5. Bifurcation only makes sense if the issues to be decided with priority are not intertwined and/or do not overlap with the merits. Otherwise, a tribunal risks constraining or influencing its decision on the merits in the subsequent phase on the proceedings.

How to bifurcate?

6. If the parties agree on bifurcation, the tribunal should follow the parties' agreement, as the parties know their case better than the tribunal.
7. If the parties do not agree, a tribunal can bifurcate the proceedings either through a reasoned procedural order (if the issues are more complex), or simply by issuing an appropriate procedural calendar.
8. In deciding on bifurcation, it may be useful to set up the procedural calendar looking backwards, starting with the deadline for rendering the award.

Is a different approach to bifurcation necessary in investment cases?

9. Even if bifurcation makes sense in a lot of investment cases, tribunals should carefully weigh all considerations before deciding to bifurcate.
10. In some cases, it is useful to be flexible. Sometimes, bifurcation makes sense even if it was not requested early on in the process.

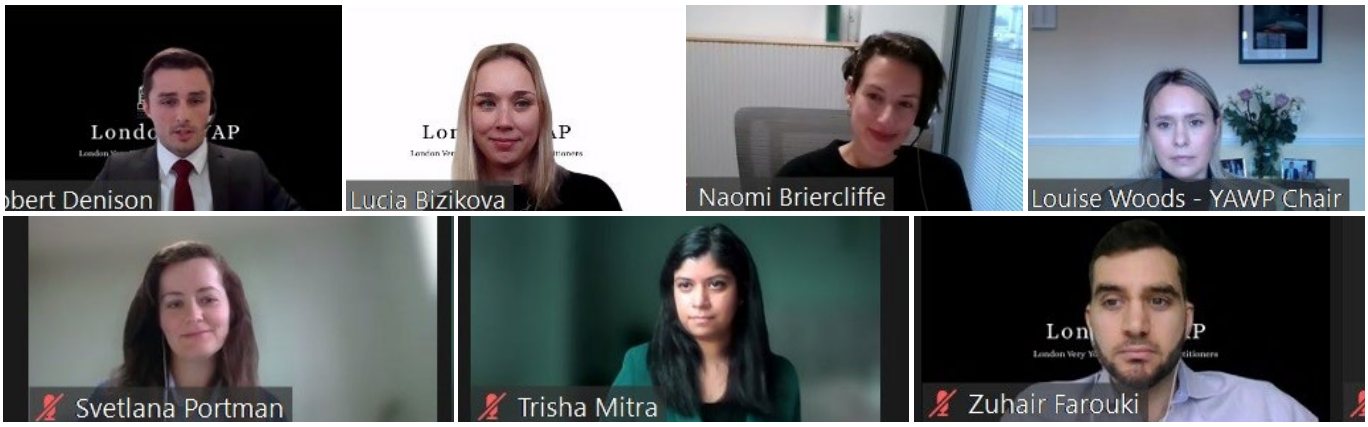
ArbitralWomen is a proud supporter of ARBinBRIEF. See the ArbitralWomen press release here for more information about ARBinBRIEF.

You can also visit ARBinBRIEF's website, www.arbinbrief.com, and follow ARBinBRIEF on LinkedIn.

Submitted by Iuliana Iancu, ArbitralWomen member, ARBinBRIEF Co-Founder, Partner, Hanotiau & van den Berg, Brussels, Belgium

Left to right: Céline Greenberg, Emilia Onyema, Iuliana Iancu

Difficult Discussions: Mastering Tricky Conversations in your Arbitration Career, on 19 January 2022, by Webinar



Top to bottom, left to right: Robert Denison, Lucia Bizikova, Naomi Briercliffe, Louise Woods, Svetlana Portman, Trisha Mitra, Zuhair Farouki

On 19 January 2022, Young ArbitralWomen Practitioners (YAWP) and London Very Young Arbitration Practitioners (London VYAP) co-hosted a webinar on 'Difficult Discussions: Mastering Tricky Conversations in your Arbitration Career'. The four-strong, all-women panel included **Naomi Briercliffe** (Counsel, Allen & Overy; ArbitralWomen member), **Svetlana Portman** (Associate, Debevoise & Plimpton), **Trisha Mitra** (ArbitralWomen member; Associate, LALIVE) and **Louise Woods** (Partner, Vinson & Elkins; ArbitralWomen Vice-President and YAWP Chair). **Robert Denison** (Associate, LALIVE) moderated the discussion on behalf of London VYAP.

The panellists offered their insights and suggested practical tips on how to tackle different types of conversations about career progression, giving and receiving feedback and tricky conversations with clients. Some of the key takeaways were:

1. Come to these discussions prepared. Have clear goals in mind and how you wish to achieve them. Check that your expectations are realistic by speaking to colleagues beforehand and consider speaking to a broader pool of people to see how your approach may be perceived, being mindful of potential cultural differences or subconscious biases, in particular gender bias.
2. Choose your moments. Performance reviews may be a good opportunity to discuss difficult issues, but there will likely be other, informal opportunities to raise the same issues or ask for feedback. The moment may come naturally, but if not, try to have the conversation at a convenient time for the other person, so that they can also prepare.
3. Communicate your boundaries clearly. However, be mindful that flexibility will sometimes be necessary, and that others (and your firm) will have their own boundaries too.
4. Listen. Be open-minded and receptive to feedback. If you disagree with feedback, address it calmly, in a positive and constructive way.
5. When giving feedback, if possible, give the recipient advance notice to allow them time to prepare. Remember to explain the positives. As for the negatives, be objective and specific. Try to focus on what the work product could have been, rather than listing everything that was wrong.

YAWP and London VYAP are very grateful to Naomi, Svetlana, Trisha and Louise for sharing their experiences and insights, which will come in particularly useful for junior practitioners.

Submitted by, on behalf of the London VYAP Executive Committee, Robert Denison, Associate, LALIVE, London, UK

Contributed by YAWP

Diversity in International Arbitration: the Client's Perspective, on 19 January 2022, by Webinar

On 19 January 2022, Young ArbitralWomen Practitioners (YAWP) organised a webinar on 'Diversity in International Arbitration: the Client's Perspective'. The event was supported by the Equal Representation in Arbitration Pledge and DIS40 (the below 40 practitioners' group of the German Arbitration Institute). The aim of the event was to explore, from the perspective of in-house counsel, the importance of hiring diverse counsel teams and appointing diverse arbitral tribunals for the effective resolution of international arbitration disputes.

ArbitralWomen member **Stuti Gadodia**, Freshfields Bruckhaus Deringer (Frankfurt), delivered the opening remarks and introduced the event to the participants following which ArbitralWomen Board member **Patricia Nacimiento**, Herbert Smith Freehills, shared her views on diversity as a multi-dimensional concept in the practice of international arbitration and why it should matter to parties looking to resolve their disputes through international arbitration.

Following the introductory remarks, **Laura Halonen**, Wagner Arbitration (Berlin), moderated a lively panel discussion for the next 50 minutes. Our distinguished panel consisted of in-house legal counsel — **Glenn Baumgarten**, Deutsche Telekom (Bonn, Germany), and **Miriam Nabinger**, Fresenius Medical Care (Bad Homburg, Germany) —as well as a law firm representative— ArbitralWomen member **Julia Grothaus**, Linklaters (Frankfurt, Germany).

The panellists opened the discussion by explaining why diversity is important for their organisations and how diversity policies are implemented in their respective organisations. On the question of hiring diverse counsel teams, Miriam Nabinger noted that diverse views and ways of thinking can only enhance the final work product and that she welcomes diversity in all its forms on her external counsel teams. In her view, however, it is critical to distinguish between diversity on paper and diversity in terms of thought process.

According to Glenn Baumgarten, given that international arbitration proceedings more often than not involve arbitrators and parties from different jurisdictions and legal and cultural backgrounds, mirroring this diversity in the counsel team is potentially crucial for the outcome of the dispute. Commenting on firms engaging in 'window dressing' to win mandates, he remarked that such practices do not go unnoticed and are unlikely to succeed in the long run.

The discussion on appointment of diverse arbitral tribunals prompted interesting comments from the audience, including on the use of artificial intelligence to gather data on and identify diverse arbitrators. Our panellists agreed that these are welcome developments to expand the pool of arbitrators and increase transparency around their performance.

Julia Grothaus emphasised the importance of law firms working together with their clients to ensure the selection and appointment of diverse arbitrators. She noted that one of the most effective ways for law firms to achieve this outcome is to propose more diverse shortlists of arbitrator candidates to the client. In this context, Glenn Baumgarten recalled that on one of his cases, he was astonished to receive from external counsel a shortlist of ten potential arbitrators, all of whom were white men!

The panel discussion was followed by a 30-minute speed networking event which gave the participants and panellists an opportunity to reflect on the discussion in smaller, informal groups.

Submitted by Stuti Gadodia, ArbitralWomen member, Principal Associate, Freshfields Bruckhaus Deringer, Frankfurt, Germany

Japanese Parties and Trends in Energy Dispute Resolution, on 20 January 2022, by Webinar

On 20 January 2022, the Japan Chapter of Energy Related Arbitration Practitioners (ENERAP Japan) hosted its inaugural event on 'Japanese Parties and Trends in Energy Dispute Resolution'.

The event was supported by a range of organisations including two major arbitral institutions, the Japan Commercial Arbitration Association (JCAA) and the Singapore International Arbitration Center (SIAC), ArbitralWomen, Chartered Institute for Arbitrators (CIArb)

Top to bottom, left to right: Alejandro Carballo Leyda, Hiroyuki Tezuka, Gloria Lim, Miriam Rose Ivan L. Pereira, Michele Sonen, Aoi Inoue, Kohei Murakawa, Yuka Fukunaga, Lars Markert, Masako Takahata, Peter Harris

(EAB) Japan and YMG Japan Chapters, Japan Association of Arbitrators (JAA), Japan In-house Lawyers' Association (JILA), Japan International Dispute Resolution Center (JIDRC), New York State Bar Association (NYSBA) International Section, Racial Equality for Arbitration Lawyers (REAL), and the Roppongi Bar Association (RBA). In addition to its founding members, ENERAP Japan was delighted to welcome a number of esteemed speakers to this milestone event, which was broadcast around the world to a large turnout of arbitration enthusiasts, practitioners, lawyers and academics, including a number of highly influential women from the world of arbitration and dispute resolution and the energy sector.

The event kicked off with a keynote speech from **Alejandro Carballo Leyda** (General Counsel, International Energy Charter) about the latest round of negotiations to reform the Energy Charter Treaty (ECT). In particular, he described the main issues in such negotiations and discussed potential future trends for disputes under that treaty.

Following welcome messages from **Hiroyuki Tezuka** (Vice President, Japan Association of Arbitrators) and **Gloria Lim** (Chief Executive Officer, SIAC), the first panel, moderated by **Miriam Rose Ivan L. Pereira** (Counsel, Oh-Ebashi LPC & Partners, ENERAP Japan co-founder, and P.R.O., JCAA), discussed energy arbitration in Asia from the perspective of Japanese parties. Speakers included **Michele Sonen** (Head, SIAC – North East Asia) **Aoi Inoue** (Partner, Anderson Mori & Tomotsune, ENERAP Japan co-founder), and **Kohei Murakawa** (Partner, Atsumi & Sakai, ENERAP Japan co-founder). The panellists discussed historical and current dispute resolution trends and preferences among Japanese parties, arbitration procedures in energy disputes, valuation for energy disputes in Japan and common dispute areas, including gas-price arbitrations, renewables and infrastructure. Michele Sonen offered insights on these issues through SIAC's lens, while Kohei Murakawa explained important practical precepts of energy arbitration in Japan. Aoi Inoue then spoke about the range of disputes involving Japanese parties across energy sub-sectors.

The second panel, covering 'Japanese Parties and Investor-State Disputes in the Energy/Resources Sector', was moderated by Prof. **Yuka Fukunaga** (Waseda University, ENERAP Japan co-founder). Speakers included **Lars Markert** (Co-chair, IPBA Investment Arbitration Subcommittee, and Partner, Nishimura & Asahi)**, Masako Takahata** (General Counsel, Industrial Decisions, Inc., ENERAP Japan co-founder) and **Peter Harris** (Counsel, Clifford Chance, Tokyo, ENERAP Japan co-founder and chair). Lars Markert noted the increasing number of ISDS cases involving Japanese parties in the energy sector before describing the Energy Charter Treaty as a potential avenue for energy-related disputes. Masako Takahata described and evaluated efforts by the Japanese government to promote inbound and outbound foreign direct investments, including the expansion of Japan's investment treaty framework. Peter Harris followed up this discussion with a related analysis of Japan's current treaty regime and the important points to keep in mind when planning investments, including with respect to ensuring that Japanese investors are able to avail themselves of treaty protection.

ENERAP Japan is looking to build on the success of this inaugural event, with more to come in the near future. It hopes to be a forum for energy-related arbitration enthusiasts and practitioners to come together to exchange ideas and learnings about energy arbitration in Japan.

Submitted by Mohsun Ali, Lawyer, Clifford Chance, Tokyo, Japan

Divided We Fall: Expanding Diversity and Intersectionality in International Arbitration, on 24 January 2022, by Webinar

Left to right: Elena Barova, Dana MacGrath, Elijah Putilin, Veronika Burachevskaya, and Verónica Sandler

Panellists and attendees from around the world joined virtually for the webinar 'Divided We Fall: Expanding Diversity and Intersectionality in International Arbitration' on 24 January 2022, organised by the Russian Arbitration Center at Russian Institute of Modern Arbitration and Russian Women in Arbitration (RWA).

Panellists from Eastern Europe, Latin America and the USA discussed the importance of working together to broaden the pool of international arbitrators appointed to cases and create a pathway for mobility of new entrants to the field.

Speakers included **Veronika Burachevskaya**, **Elena Burova**, **Dana MacGrath**, **Katarina Piskunovich**, **Elijah Putilin**, and **Verónica Sandler**.

Submitted by ArbitralWomen President and Independent Arbitrator Dana MacGrath, MacGrath Arbitration, New York, USA

Inaugural Book Launch: Force Majeure & Hardship in the Asia Pacific Region, on 24 January 2022, by Webinar

Top to bottom, left to right: Kabir Duggal, Rekha Rangachari, Chiann Bao, Christopher Lau, Lucy Reed, Yoshimi Ohara, David Kitzen, Mohamed Abdel Wahab, Harald Sippel.

In this inaugural book launch, authors, Dr. **Kabir Duggal** and Dr. **Harald Sippel**, analysed the impact of *force majeure* in and across 17 key jurisdictions — joined by leading global scholars including ArbitralWomen member and Independent Arbitrator **Chiann Bao**, with Arbitrators Dr. **Mohamed Abdel Wahab**, **Christopher Lau**, and **Yoshimi Ohara**, and keynote delivered by Professor **Lucy Reed**. The remote platform was run by ArbitralWomen Board member and NYIAC Executive Director **Rekha Rangachari**.

The speakers focussed on the persistence of the Covid-19 pandemic (with new variants emerging in real time) and the manner in which governments continue to impose lockdowns, travel restrictions, and other measures to contain the spread of the virus. In parallel, they analysed the broader interruption to business, including the impact of global natural disasters (e.g., hurricanes in the Americas, tsunamis in Asia, volcano eruptions in Iceland), delving into the important narratives that emerge about causation.

For example, although *pacta sunt servanda* is a fundamental legal maxim, it is not applicable at all times. Another legal maxim emerges in parallel, recognising that situations can change so fundamentally that the performance of

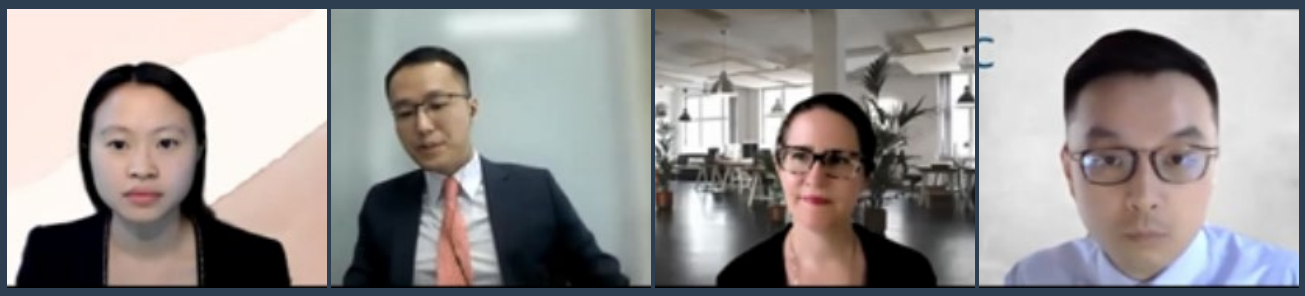
a contract may be impossible —*rebus sic stantibus*— with a variety of applications, including exceptional circumstances (i.e., non-performance excused where a party's performance is rendered impossible by *force majeure*).

The programme also contoured a robust discussion on instances where performance of contractual obligations is still possible, however on terms so greatly disadvantageous to one party that there is a fundamental shift in performance and consideration. These changed circumstances, or hardship, provide an opportunity for renegotiation of the contractual terms.

The book is available for purchase via JURIS. At the session, the authors also launched a critical online resource, Force Majeure and Hardship in Int'l Contracts and Disputes, regularly updated on LinkedIn.

Submitted by Rekha Rangachari, ArbitralWomen Board member and NYIAC Executive Director, New York, USA, and Chiann Bao, ArbitralWomen member and Independent Arbitrator, Arbitration Chambers, Hong Kong & London, UK

Recovery of in-house costs, on 25 January 2022, by Webinar



Left to right: Elizabeth Chan, Zongnan Wu, Lucy Martinez and Cunyuan Zhang

On 25 January 2022, Lucy Martinez, ArbitralWomen member and Independent Arbitrator, and **Elizabeth Chan**, ArbitralWomen Board member and Registered Foreign Lawyer at Allen & Overy, shared their research on the recovery of in-house costs as a matter of English law and international arbitral practice, during a webinar hosted by V&T Law Firm. This research was conducted for the speakers' contribution to the forthcoming book, *Arbitration in England: Vision in 2030*.

Elizabeth began with the point that in-house costs can and should be routinely claimed. As tribunals are increasingly willing to adjust costs (in favour of the winning party), parties should be ready to claim for them. The speakers addressed two categories of in-house costs: (i) in-house counsel costs; and (ii) in-house management costs. These categories of costs are not often claimed, but can nonetheless constitute significant costs for companies.

On in-house counsel costs, Elizabeth explained that recovery may be justified, given in-house counsel's increasing role in international arbitrations, which may go beyond supervising the work of external counsel. She observed that the prevailing approach in international arbitration is that in-house legal costs are in principle recoverable, provided that they are directly connected with the arbitration, not duplicative of external counsel work, and sufficiently substantiated. The position is similar under English law. Elizabeth concluded with some practical considerations on properly substantiating in-house counsel costs, which can be challenging, given companies usually do not require in-house counsel to record their time.

On in-house management costs, Lucy explained that companies' management and employees often play an important role in relation to factual, technical and/or expert issues. Their time spent on the arbitration will usually divert time and attention from other responsibilities, which would otherwise generate revenue for the company. Lucy noted that, although such costs were usually not claimed, they are in principle (as a matter of English law and international arbitral practice), recoverable, provided that the work is directly related to investigating and/or mitigating the dispute, and are not unreasonably duplicative of external and/or in-house counsel work.

Lucy concluded the webinar with practical tips on the recovery of in-house costs for parties (including their in-house counsel), external counsel, and tribunals.

The webinar was moderated by **Zongnan Wu**, Associate at V&T Law Firm, who also provided commentary from a Chinese law perspective. **Zhang Cunyuan**, Chief Representative (China) for the Singapore International Arbitration Centre, also provided commentary from the perspective of an arbitral institution.

The recording of this webinar is available here.

Submitted by Elizabeth Chan, ArbitralWomen Board member, YAWP – Young ArbitralWomen Practitioners Co-Director, Registered Foreign Lawyer, England and Wales, Allen & Overy, Hong Kong

The influence of Lebanese Law (*Le rayonnement du droit libanais*), on 27 January 2022, by Webinar

Top to bottom, left to right: Hervé Lecuyer, Jacques Mestre, Gaby Chahine, Sandy Lacroix de Sousa, Nadine Najem, Georges-Philipee Zakhour, Aline Tanielian Fadel, Cédric Dubucq, Joséphine Hage-Chahine, Gérard Blanc

The AFDD (French Association for Holders of Doctorate Degrees in Law) organised a webinar dedicated to Lebanese law on 27 January 2022. It began with a keynote speech by Professor **Hervé Lecuyer**, who recalled the undeniable history associating the French and the Lebanese legal systems and insisted on the importance of maintaining such a solid link between the two systems for the benefit of the legal community.

Several presentations by eminent Lebanese jurists followed, addressing a wide range of topics, highlighting the influence of the Lebanese law:

Professor and judge **Nadine Najem** introduced the recent trends regarding 'the payment of debts denominated in US dollars before the Lebanese courts'.

Professor and judge **Gaby Chahine** examined 'the new financing techniques of a joint-stock company under Lebanese law'.

Professor and lawyer **Georges-Philippe Zakhour** illustrated 'the influence of Lebanese case law in times of crisis' by analysing the conversion rates of the Lebanese pound against the US dollar in payment obligations and the liberating power of check remittance.

Professor and lawyer **Joséphine Hage-Chahine** covered 'the particularities of the Lebanese law of arbitration compared to French law'.

Professor and lawyer **Julie Mouawad** presented 'artificial intelligence facing the Lebanese Monetary Market' as a reality affecting law, ethics, and the Lebanese Monetary Market.

Professor and lawyer **Aline Tanielian Fadel,** ArbitralWomen member, discussed 'Judicial mediation and virtual hearings as two means to avoid denial of justice in Lebanon'. She first underlined that the Lebanese judiciary is facing various practical challenges, due to the current economic crisis, which have resulted in unprecedented congestion of the courts and delayed judgments. She then explained that such situation may constitute a 'denial of justice' and urged therefore for the implementation of the available legal means to relieve Lebanese courts, while waiting for legislative and structural reforms in Lebanon. Professor Tanielian proposed judicial mediation, already adopted in Lebanon by law no. 82/2018, as a solution for disputes which can be settled. She highlighted its advantages and described its process. Subsequently, Professor Tanielian pointed out several obstacles that undermine the effectiveness of Lebanese law, adding that training courses on judicial mediation will be required.

As for the disputes which may not be settled by nature, Professor Tanielian suggested virtual hearings as a solution. She argued that, in the absence of a Lebanese text prohibiting hearings held virtually, and as long as public policy, the essential formalities, and, in particular, due process are respected, the validity of such hearings may not be questioned. She finally welcomed the virtual hearings held during the pandemic by many Lebanese judges via audio-visual applications and encouraged future initiatives in that regard.

Professor **Marie Eude** concluded the webinar by paying tribute to the cedar of Lebanon and its legal status.

Submitted by Aline Tanielian Fadel, ArbitralWomen member, Partner, Eptalex – Aziz Torbey Law Firm and Marita Karaky, Trainee at Eptalex, Beirut, Lebanon

ADR & Diversity Symposium, on 27 January 2022, by Webinar

ArbitralWomen was a proud supporter of the virtual symposium held on 27 January 2022 on ADR and Diversity, organised by New York Law School's Alternative Dispute Resolution Programme and sponsored by the American Arbitration Association – International Centre for Dispute Resolution (AAA-ICDR), thanks to the planning efforts of Professor **Peter Phillips** and moderating by Professor **Genesis Fisher**.

Left to right: Deborah Enix-Ross, Rekha Rangachari, Kabir Duggal and Shira Scheindlin

Panellists explored reasons why, in a diverse economy driven by diverse participants, the practice of arbitration and mediation has been persistently homogeneous. Speakers framed real-world recommendations to accomplish the goal of having ADR neutrals reflect the diversity of the disputants with whom they work.

The event started with an inspiring keynote by **David A. Paterson**, the 55th Governor of the State of New York – one of the diverse trailblazers in New York.

Thereafter, ArbitralWomen member **Deborah Enix-Ross,** President-Elect of the American Bar Association (ABA), delivered an equally inspiring keynote (the recording of Deborah's remarks can be accessed here ▶).

Deborah spoke about the long-standing systemic inequities in the dispute resolution field as a slice of the broader social justice inequity. She commented: 'recalling our past can be painful, it can be frustrating, but it is necessary because clearly we cannot fix what we do not acknowledge'.

Deborah described the history of the ABA and the evolution of diversity with the organisation. She explained that one of ABA's key goals is to 'eliminate bias and enhance diversity by promoting full and equal participation in the legal profession by those who have historically been denied opportunities, including women, people of colour, people with disabilities, and people of differing sexual orientation and identities'. She noted that clients and the public are better served when organisations are diverse and inclusive at every level.

Observing that the ADR field is arguably the least diverse segment of the legal profession, Deborah explained: 'that [lack of diversity] was the impetus for a Resolution adopted by the ABA in 2018 (Resolution 105) that urged providers of domestic and international dispute resolution to expand their rosters with minorities, women, people with disabilities, and people with diverse sexual orientation and gender identities, and to encourage the selection of diverse neutrals'.

Deborah then described some of the ABA programmes and events to promote diversity. 'We need to continue shining a spotlight on the low level of diverse representation on neutral rosters', Deborah commented, 'to encourage and engage all stakeholders to increase representation of diverse neutrals on rosters, and to enhance their likelihood of success in the selection process'. In closing, she stated emphatically regarding efforts to continue promoting diversity in ADR: 'We must never tire. We must press on'.

Following the remarks of former New York Governor Patterson and ABA President-Elect Deborah Enix-Ross, panellists, who each represented an organisation or committee focussed on promoting diversity, engaged in a roundtable discussion on various aspects of how the ADR community can increase the diversity of ADR neutrals.

The panel discussion was moderated by ArbitralWomen Board member **Rekha Rangachari** (New York International Arbitration Center) and **Jeffrey Zaino** (American Arbitration Association).

Speakers for the various diversity organisations included (alphabetically), **James Arturo Aliaga** (Hispanic National Bar Association), **Kabir Duggal** (Racial Equality for Arbitration Lawyers), **Rachel Gupta** (ADR Inclusion Network), **Lauren Jones** (Metropolitan Black Bar Association), **Ann Lesser** (AAA-ICDR Diversity Committee), **Dana MacGrath** (ArbitralWomen), **Thomas Maloney** (Defense Research Institute ADR Committee Chair), **Rodney Pepe-Souvenir** (Haitian American Lawyers Association of New York), **Joanne Saint Louis** (JAMS Diversity Outreach Director), and the Hon. **Shira Scheindlin** (CPR Institute Diversity Task Force).

Kabir Duggal commented: 'When we are talking about international arbitration, it should be international. It is important for us to acknowledge that it is not – even in Asia, even in Africa, the arbitrators are not Asian and African, the power is still largely white. (…) The power structures are still with Caucasians. I just want to put that on the table, I think this is something we should acknowledge and do something about'.

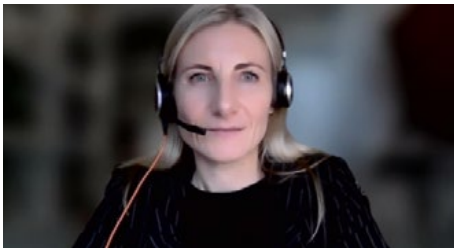
Hon **Shira Scheindlin** emphasised: 'We all have to take personal responsibility to make change' and described steps that she and others individually have taken to help move the needle further toward greater diversity.

The recording of the roundtable of the panellists representing their respective diversity organisations can be found here ▶.

Submitted by ArbitralWomen President and Independent Arbitrator Dana MacGrath, MacGrath Arbitration, New York, USA

TagTime Season 5: Anneliese Day QC on 'Is there a place for remote hearings in a post pandemic world?', on 2 February 2022, by Webinar





Left to right: Kabir Duggal, Amanda Lee, Anneliese Day

On 2 February 2022, ArbitralWomen member **Anneliese Day** QC discussed the challenges and opportunities presented by remote hearings in a post-pandemic world. This webinar was part of Delos Dispute Resolution's 'TagTime' series, supported by ArbitralWomen and presented by ArbitralWomen Board member **Amanda Lee** and **Kabir Duggal**.

The Covid-19 pandemic has had an unprecedented impact on the arbitral process. While remote hearings were used before to cross-examine witnesses, conducting full hearings online was rare. According to an ICC survey, by the end of 2020, 71% of users had taken part in fully virtual hearings.

At the beginning of the pandemic, arbitral institutions such as Delos, the SCC, ICC and HKIAC promptly issued guidance to assist arbitration users in conducting virtual hearings. Since then, many arbitration institutions (LCIA, ICC, etc.) have amended their rules to expressly allow virtual proceedings.

Anneliese referred to a recent Austrian Supreme Court case, which confirmed the tribunal's power to hold remote hearings over one party's objections and rejected due process concerns. However, this decision does not reflect international arbitral practice in many jurisdictions.

In this context, she mentioned an ICCA comparative project, which covers 78 NY Convention jurisdictions and analyses whether a right to a physical hearing exists in international arbitration. Interim findings showed that none of the surveyed jurisdictions expressly grants a right to a physical hearing. However, in jurisdictions such as Ecuador, this right may be inferred, while in Norway or Tunisia, the position is unclear. In the UAE, arbitrators have express discretion to hold remote hearings.

Holding a remote hearing against the parties' wishes may lead to the setting aside of the award (the Dominican Republic, Jamaica, Spain, etc.). However, in Japan, Scotland, etc., an award will only be set aside if ordering an online hearing over party objection has had a material impact on the outcome of the case or caused substantial injustice.

In other jurisdictions, tribunals may order a remote hearing despite the parties' contrary agreement, if doing otherwise would delay the arbitration beyond statutory time limits (UAE) or violate the tribunal's duty to conduct proceedings without undue delay (Croatia, Iran, and Qatar). In Venezuela, a tribunal may order an online hearing over the parties' objection to preserve the integrity of the arbitral process and ensure equal treatment of parties.

In some jurisdictions, setting aside the award is not the only potential adverse consequence. For instance, parties may revoke an arbitrator's authority (the Bahamas) or a court may order the non-payment of an arbitrator's fees and expenses (Scotland).

Benefits of remote hearings include cost and time efficiencies, expeditious resolution, and diversity of counsel. However, major drawbacks include the need to learn new skills and adapt advocacy, loss of atmosphere, non-sight of non-video participants, and privacy issues.

Finally, Anneliese shared several tips for effective oral advocacy in remote hearings and identified considerations for tribunals when deciding whether a remote hearing is appropriate.

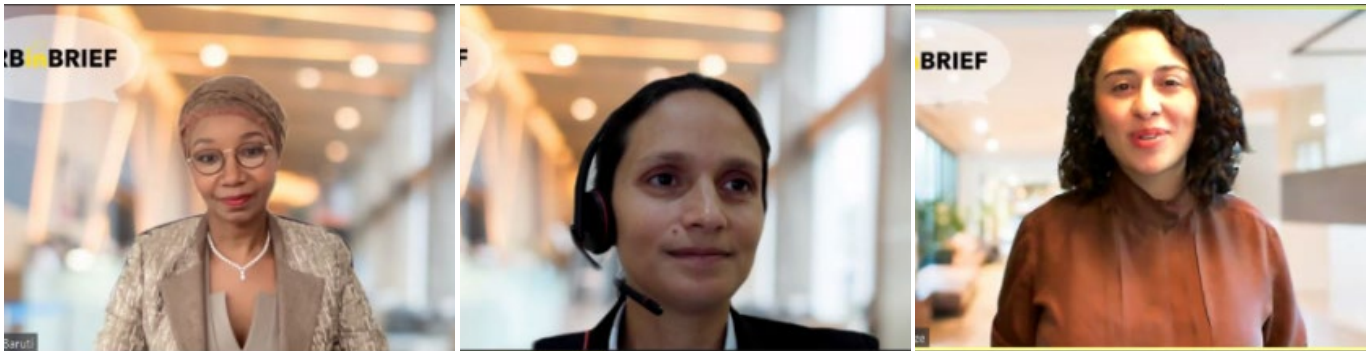
Anneliese tagged **Erin Miller Rankin** to appear on a future episode of the series.

Submitted by Anne-Marie Grigorescu, New York State attorney at law, New York, USA

ARBinBRIEF is a practical video guide on hand-picked arbitration issues. It aims to provide a concise and informative resource for the arbitration community, and to showcase talented arbitrators. Each episode features a 15-minute live conversation between two stellar arbitrators and is later made available on the ARBinBRIEF YouTube channel. The episodes follow the arc of an arbitration proceeding, giving members of the arbitration community a key resource to turn to at any phase of an arbitration they find themselves in.

Over the course of ten episodes of season one, ARBinBRIEF moves through the lifecycle of an arbitration. This section features reports on Episodes Eight and Nine of season one of the ARBinBRIEF series.

ARBinBrief Season One, Episode Eight, 'Evaluating Witness Evidence', on 9 February 2022, by Webinar



Left to right: Rukia Baruti, Amani Khalifa and Nata Ghibradze

Episode Eight was held on 9 February 2022. It focussed on one of the final stages of an arbitration — 'evaluating witness evidence' by arbitrators. This episode was moderated by ArbitralWomen member **Nata Ghibradze**, Senior Associate at the International Arbitration practice group of Hogan Lovells, in Munich. It featured an interview between Dr. **Rukia Baruti**, an Independent Arbitrator and ArbitralWomen member and the Secretary General of the African Arbitration Association, **Amani Khalifa**, Counsel at Freshfields Bruckhaus Deringer in Dubai.

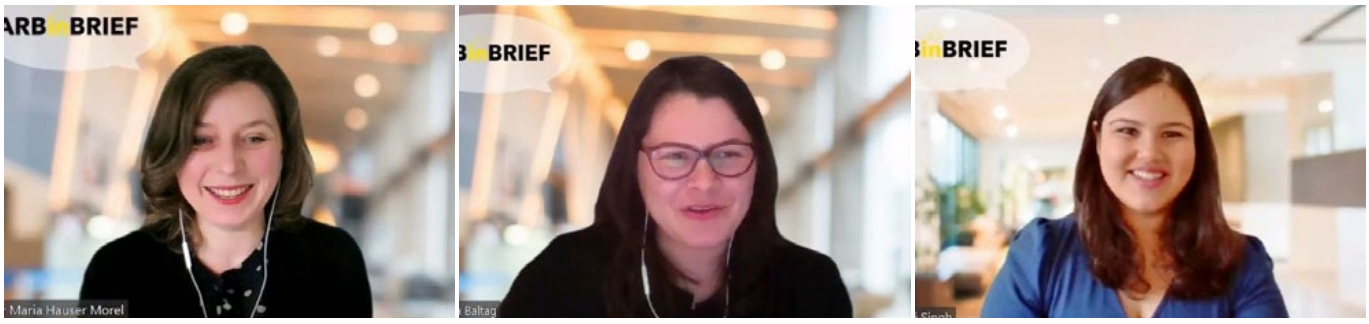
Rukia and Amani engaged in a thought-provoking discussion on the topic of evaluating witness evidence, from their perspective as arbitrators. They discussed issues such as: the accuracy of fact witness statements and their importance for the arbitral tribunal when evaluating arguments advanced by parties; the issues related to fully-rehearsed witness testimonies; the need for witness evidence; and the role of arbitral tribunals when guiding the parties regarding the type of witness evidence to be provided. The speakers discussed an old Chinese proverb: 'the faintest ink is more powerful than the strongest memory' to underscore the relative importance of documentary evidence over witness testimony. The speakers recommended that tribunals decide on the need for witness evidence depending on the availability of documentary evidence. CPR Practice Direction 57AC, which provides guidance on using witness evidence in English civil proceedings, was recommended as a useful tool in this respect.

ArbitralWomen is a proud supporter of ARBinBRIEF. The ARBinBRIEF series is divided into seasons consisting of 10 episodes each. Each episode features a 15-minute live conversation between two arbitrators that is recorded, followed by a 15-minute audience Q&A that is not recorded. The episodes air every fortnight on Wednesdays at 2pm, London time.

The recorded conversation is shared here as part of a library of video guides on ARBinBRIEF's YouTube Channel and the Delos Dispute Resolution website. To keep up to date on ARBinBRIEF, follow it on LinkedIn, and to sign up for future episodes visit www.arbinbrief.com.

Submitted by Nata Ghibradze, ArbitralWomen member, Senior Associate, Hogan Lovells, Munich, Germany

ARBinBRIEF Season 1, Episode Nine on Costs, on 23 February 2022, by Webinar



Left to right: Maria Hauser-Morel, Crina Baltag and Mrinalini Singh

On 23 February 2022, Episode 9 of ARBinBRIEF's Season 1 aired, featuring ArbitralWomen members Dr. **Maria Hauser-Morel**, Counsel and Arbitrator, Hanefeld, Paris, and Dr. **Crina Baltag**, Associate Professor in International Arbitration, Stockholm University, discussing Costs. The discussion was moderated by ArbitralWomen member **Mrinalini Singh**, Solicitor at Plesner, Copenhague.

Episode 9 kicked off with Dr. Hauser-Morel and Dr. Baltag assessing the advantages of the two main models arbitral institutions use to determine arbitrators' fees: either fixing them by reference to scales based on the amount in dispute, or by an hourly rate. Relevant factors included the predictability of costs and prevention of frivolous claims when fixing costs according to a scale; using an hourly rate could better reflect the work of the arbitrators. The speakers also considered how advances on costs might increase should the value of the claim increase: according, for example, to the DELOS arbitration rules, they would in some circumstances, but not automatically.

In connection with advances on costs, the discussion then moved to considering separate advances on costs, and what would happen should a respondent fail to pay the advance for a counterclaim. The speakers noted how a respondent's counterclaim will often be considered withdrawn in that situation, which can prevent frivolous claims being advanced, but a tribunal would need to ensure this does not prevent a party's access to justice.

As to ultimately awarding costs for the dispute, the speakers discussed how a tribunal should be taken to have jurisdiction to decide on costs, even if it did not have jurisdiction to hear a case. This is consistent with the *kompetenz-kompetenz* principle, and having another body decide the issue instead would unnecessarily inflate costs.

Moving on to allocating costs between the parties, the speakers exchanged views on whether 'costs follow the event' should always be the starting principle. They noted that the applicable arbitration rules and mandatory provisions of law of the seat were essential here, and that many rules allow tribunals to consider all relevant circumstances. These include not only the result of the dispute, but also the parties' conduct during the proceedings.

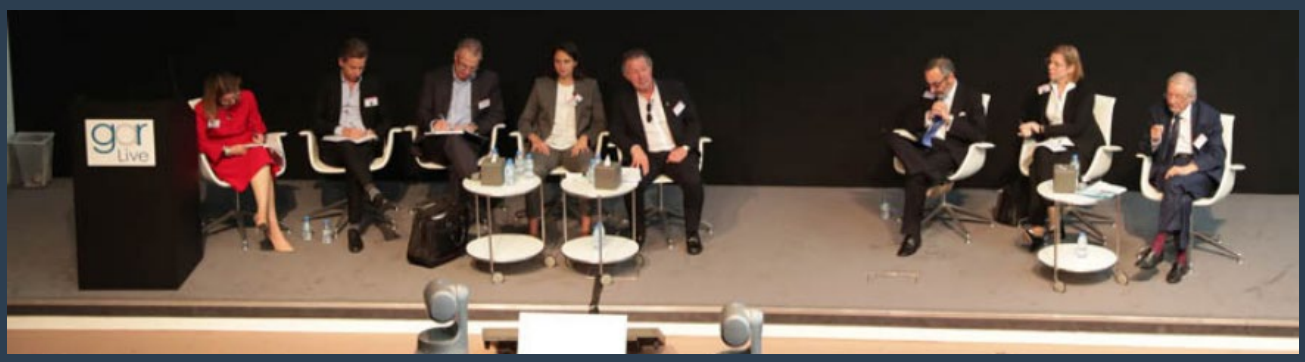
Finally, the speakers discussed whether a party to arbitration proceedings may recover internal costs, such as in-house counsel costs. They noted how, as a general rule, internal costs may be recovered, but that this requires properly evidencing costs. There should, therefore, be a system for evidencing these costs.

This episode will shortly be made available on the ARBinBRIEF YouTube Channel.

Submitted by Mrinalini Singh, ArbitralWomen member, founding member of ARBinBRIEF, Solicitor at Plesner Advokatpartnerselskab, Copenhagen, Denmark

GAR Live: Abu Dhabi 2022, on 9 February 2022, in Abu Dhabi, United Arab Emirates

On 9 February 2022, ArbitralWomen member **Soraya Corm-Bakhos**, Counsel at Watson Farley & Williams (Middle East) LLP in Dubai, participated in the one-day GAR Live: Abu Dhabi 2022 conference in the ADGM Square, Al Maryah Island, Abu Dhabi, UAE. This edition of GAR Live was very well attended, with all participants



GAR Live Abu Dhabi panellists

expressing their pleasure to be able to attend in person. **Gary Born** gave the Keynote Speech and addressed current developments in international commercial arbitration.

The programme included excellent panel discussions. In a first session, moderated by **Nayla Comair-Obeid** (Partner, Obeid & Partners), independents arbitrators **Georges Affaki**, **Nadine Debbas**, **Anne Hoffmann** and **Victor Leginsky** shared their stories, hints and tips for improving advocacy skills and perfecting persuasion. **Cheryl Cairns** (Partner, Trowers & Hamlins), **Cameron Cuffe** (Partner, Ashurt) **Amir Ghaffari** (Partner, Ghaffari Partners), **Ian Greenbough** (managing director, Kroll), **David Hume** (Counsel, Shearman & Sterling, David Merritt, Managing Director, Driver Trett) then discussed the effect of Covid-19 on construction projects. Working through a series of scenarios, the panel, moderated by **Lara Hammoud** (Senior Legal Counsel, ADNOC), addressed the effect of Covid-19 on construction claims and the most effective strategies implemented by the relevant stakeholders to mitigate the effects of the pandemic. The third panel, moderated by **Alec Emmerson** (Independent Arbitrator) and composed of **Alain Farhad** (Partner, Mayer Brown), **Sheila Shadmand** (Partner, Jones Day), **Paul Stothard** (Partner, Norton Rose Fulbright) and **Ali Isamel Al Zarooni** (Managing Partner, Horizon & Co) addressed recent case law developments three years into the implementation of the UAE Federal Arbitration Act.

Finally, the GAR Live Debate concluded the conference. In Oxford Union Style, two excellent teams of debaters argued in favour of, and against, the following motion: 'This house believes that Decree 34 will promote arbitration in Dubai, the UAE, and the region'. In September last year, Decree 34 abolished the DIFC-LCIA Arbitration Centre, the sister organisation of the London-based LCIA, causing shock within the local legal community. In a humorous and engaging manner, **Michael Black** QC (Barrister, XXIV Old Buildings) and **Alsyha Mutaywea** (Partner, Mena Chambers) argued in favour of the motion, while **Karim Nassif** (Independent Arbitrator) and **James Willn** (Partner, Reed Smith) argued against it. The panel of judges, composed of **Fatima Balfaqeeh** (Founder, Managing Director, RKAH), **Soraya Corm-Bakhos**, lead moderator of the debate, and **Sami Houerbi** (Independent Arbitrator) then voiced opinions on what had been heard and challenged the debaters with thought–provoking questions on the highly controversial topic of Decree 34.

Submitted by Soraya Corm-Bakhos, ArbitralWomen member, Counsel at Watson Farley & Williams (Middle East) LLP, Dubai, UAE

7th Annual Virtual Qatar & MENA International Arbitration Summit, on 28 February 2022, by Webinar

Due to Covid-19 restrictions globally, this year's Legal Plus Virtual Summit kicked off with **Emily Wood** QC from Essex Court Chambers, giving us all a timely update of arbitration in the current climate and the effects on supply chains, as the pandemic has affected business across the globe.

Many excellent presentations were given on the day, from a diverse selection of experts from the Middle East and globally, offering invaluable information for in-house counsel from leading companies in the MENA region — a few notable takeaways from the highlights came through. The first speaker of the day was the hugely well-respected **Paula Boast**, Head of the construction team at Charles Russell Speechlys, highlighting the risks and challenges and the Qatar court of appeal. Following Paula, **Damien McDonald**, Barrister at Outer Temple Chambers, gave a timely talk on 'Managing MENA & China related M&A Disputes'.

Next up on the agenda, **Andrew Lowe** gave the attendees up-to-date knowledge on the latest issues on investigations and enforcement in Qatar and a current update of Qatar Financial Centre (QFC) laws. This was in turn followed by a lively discussion on 'Use of Expert Witness in Arbitrations', with the tag

Left to right: James Breman, Mehdi Mellah, Dania Fahs and Lucy Martinez

team of **Jason Beech**, of Qatar Rail, and **Saad Hegazy**, of CIArb Qatar, keeping the momentum going in the first half of the day. Sandwiched between these two memorable presentations was another well-known duo in the Middle East, **Victor Leginsky**, independent arbitration expert, and **Jay Alexander**, global expert signing in from the US, to talk about arbitrators' best practices and the future of arbitration!

After a short interlude and a little time to reflect on the previous talks, next up was **Hani Al Naddaf**, Head of Disputes in Qatar of the well-known law firm in the region, Al Tamimi, offered insights into the enforcement of awards in Qatar and some current updates to highlight. After that, it was **Julian Cohen**'s turn to give a solo presentation, being a Hong Kong Barrister of Resolution Chambers. He also gave a timely and informative talk on the management of construction disputes in the virtual age, with some enlightening tips and experience. This was then followed by a lively and excellent presentation from the Walkers Global practice team, which included **Collette Wilkins** QC, **Cate Barbour** and **Luke Petith**, sharing valuable insights on 'Offshore solutions to disputes in the Middle East'.

To close out the day and continue the information smorgasbord offered to the delegates, we had a live grand panel expertly moderated by **James Bremen**, a leading Partner at Quinn Emanuel, with **Lucy Martinez**, ArbitralWomen member and Independent Arbitrator, offering some excellent advice on the pros and cons of funding litigation, together with **Mehdi Mellah**, who is the senior legal counsel from a highly respected litigation funding company, Deminor Recovery Services, talking on essential tips on funding litigation in the region and globally; together with Dr. **Dania Fahs**, Director of the ICC, sharing her wealth of experience in arbitration in the region.

All in all, it was an excellent and informative way to spend an afternoon, with many experts willing to share their knowledge in the region and beyond. Many thanks to the speakers, sponsors ArbitralWomen, ICC, CIArb and the other partners who made the event possible. We now look forward to the other global Legal Plus Summits throughout Asia & MENA in 2022.

Submitted by Jason Sinclair, Managing Director, Legal Plus, Hong Kong

Contributed by YAWP

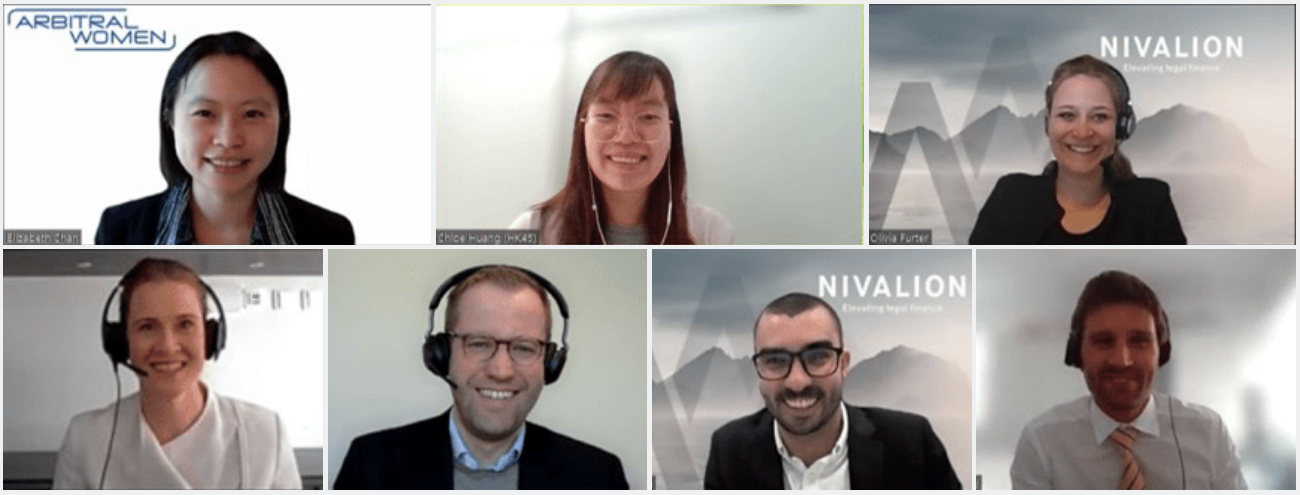
Third-party litigation finance in practice, on 3 and 8 March 2022, by Webinar

On 3 and 8 March 2022, Burford Capital (represented by **Emily Tillett** – Vice-President – and **Jörn Eschment** – Senior Vice President-) and Nivalon AG (represented by **Olivia Furter** – Co-Head of Switzerland, France & Benelux – and **Lucas Pestana Macedo** – Case Manager-), together with Young ArbitralWomen Practitioners (YAWP), the Equal Representation in Arbitration Pledge Young Practitioners' Subcommittee (ERA YPSC), Transnational Dispute Management (TDM) and HK45, hosted interactive virtual workshops on third-party litigation finance.

The workshops gave participants an understanding of the concept and basics of commercial legal finance, its use and implications in practice, including its ability to improve diversity in the business of law, and an opportunity to engage directly with representatives of Burford Capital and Nivalion AG in small group sessions.

Large corporates and leading law firms around the world are shifting from the reactive mindset that has dominated the past couple of years to one that is forward-looking and commercially minded. As commercial legal finance continues to make headway, understanding how funders work becomes ever more important – for companies to offload risk, enhance budget certainty and accelerate return on legal assets, and for law firms to better serve clients, compete for new business and invest in growth.

The workshops were based on a hypothetical case study involving Curie Energy's General Counsel, who



Top to bottom, left to right: Elizabeth Chan, Chloe Huang, Olivia Furter, Emily Tillett, Jörn Eschment, Lucas Pestana Macedo and Ben Bury (during Session One)

had queries about litigation financing options given:

i. a number of claims raised by consumers of Curie Energy's power distribution network;
ii. a single assertive case (an arbitration) with potential damages of USD 50 million; and
iii. the desire to remove the cost of the arbitration from the company's balance sheet prior to a potential M&A transaction.

After an introduction to the concepts and basics of commercial legal finance and an overview of different offerings (including single case funding, portfolio funding, monetisation of awards and insurance solutions), participants joined interactive sessions in small groups led by representatives of Burford Capital and Nivalion AG to discuss issues arising in the case study. Each group focussed on one of the offerings and nominated a representative to feedback to the wider group.

In the context of the case study, participants learned what cases are suitable for funding, both on claimant's and defendant's side; what offerings could match their cases; timing for seeking funding and what to consider when advising clients or approaching litigation finance firms in connection with a funding request. Participants also gained useful insights into the value a funder can add for corporate clients and law firms, and practical tips from a funder's perspective.

On the topic of opportunities to improve diversity in the business of law, Burford Capital introduced its Equity Project, an award-winning initiative to improve gender and racial diversity in the business of law, by addressing the persistent diversity gap in senior levels at law firms with USD 100 million of legal finance capital earmarked to fund commercial litigation and arbitration led by female and racially diverse lawyers. This was also relevant in the context of the case study, as the general counsel of Curie Energy was a female, so she could qualify for Burford's Equity Project funding.

The workshops were well attended by participants from jurisdictions across Asia Pacific, Europe and South America. For many participants, this was the first time that they had engaged with third-party financing in such a practical way.

Submitted by Emily Tillett, ArbitralWomen member, Vice President, Burford Capital, Hong Kong; Jörn Eschment, Senior Vice President, Burford Capital, Switzerland; Olivia Furter, ArbitralWomen member, Co-Head of Switzerland, France & Benelux, Nivalion AG, Switzerland; and Lucas Pestana Macedo, Case Manager, Nivalion AG, Switzerland

Mixed modes of ADR processes for resolving commercial disputes: Pros and cons, on 7 March 2022, in Budapest, Hungary

KPMG Legal Tóásó Law Office and the Hungarian Arbitration Association (HAA) held a professional conference in March in Budapest, with the participation of distinguished foreign guest speakers. The focus of the event was on the potential impact and interplay of arbitration and other alternative dispute resolution procedures in commercial dispute resolution, their potential and risks.

The opening keynote was delivered by **Jeremy Lack**, an internationally renowned dispute resolution expert, Global Elite Thought Leader of 2019 and 2020, regular contributor to professional journals, and lecturer at Harvard University and the UN General Assembly. As a mediator, arbitrator and lawyer, in his speech he shared some of his extensive experience in alternative dispute resolution, with the main focus

Left to right: Niamh Leinwather, Adam Boóc, Manuela Grosu, Vlad Peligrad, Jeremy Lack (not pictured, Bálint Tóásó)

being on ADR —the appropriate dispute resolution— and related approaches.

Jeremy Lack explained that ADR has several forms which have a striking difference, as arbitration, conciliation and mediation are three common forms of ADR. As he pointed out, when we assess the procedural choices in a case, it is important to understand that mediation is an evaluative process, whereas in conciliation and arbitration the neutral's subject-matter expertise is sought to help set norms, make proposals or help decide the matter. 'This distinction is often confused in international commercial disputes. These ADR processes should all be considered and assessed in parallel. None is better than the other and each one has its benefits. When managed properly, each one can assist the parties in reaching outcomes that can be enforced or complied with, and have faster and cheaper outcomes than resorting to traditional litigious pathways' —highlighted Jeremy Lack at the conference.

Niamh Leinwather, Secretary General of the Vienna International Arbitral Centre, also held an insightful keynote on multistep dispute resolution clauses and the advantages and disadvantages of combining mediation and arbitration.

The presentations were followed by a panel discussion, to give further insight into combining arbitration with mediation, multi-tier clauses, increasing the efficiency of the arbitration proceedings.

ArbitralWomen member **Manuela Grosu** LL.M. PhD, attorney-at-law at KPMG Legal Tóásó law firm, who was also the principal organiser of the event from KPMG Legal side, also participated in the panel discussion.

Submitted by Manuela Grosu, ArbitralWomen member, attorney-at-law, KPMG Legal Tóásó Law Firm, Budapest, Hungary

Effective Employment Law Arbitration and Mediation, on 8 March 2022, by Webinar

Left to right: Zachary Fasman, Terrance J. Nolan, Stephen Sonnenberg, David J. Reilly and Holly H. Weiss

On 8 March 2022, the NYU Labor Center and the NYU Law Student Mediation Organization presented a webinar titled 'Effective Employment Law Arbitration and Mediation'. The NYU Labor Center is a non-partisan forum for debate and study of the policy and legal issues involving the employment relationship. The webinar brought together a distinguished panel of New York-based arbitrators and mediators who have represented both employer and employee interests. The panellists shared their experiences and insights about mediation and arbitration generally, with a particular emphasis on effective resolution of employment disputes arising in New York.

Professor **Samuel Estreicher** (NYU Law) opened the webinar by introducing the five panellists, each of whom were involved with the NYU Labor Center, as board members or otherwise. **Zachary Fasman**, of Fasman

ADR, moderated the discussion, starting by asking **Holly H. Weiss**, an AAA arbitrator and mediator from HWH Mediation LLC, to summarise the rules and procedures governing mandatory and voluntary mediation of employment disputes in New York. Ms. Weiss covered important provisions of the procedures governing court-annexed mediation in the federal and state courts in New York, as well as private mediation in such forums as the AAA and JAMS. She noted that when mediators are paid (as in the Eastern District of New York), parties have the ability to select their mediator. When mediators are not paid, however (as in the Southern District of New York), mediators are assigned by the Mediation Office of the Court. When selecting a mediator or arbitrator, Ms. Weiss encouraged parties to use many available resources, including the newly published Directory of Diverse Neutrals, which is co-sponsored by the New York State Bar Association and the New York City Bar Association.

Holly H. Weiss, **Stephen Sonnenberg**, of JAMS, and **David J. Reilly**, of the ADR Office of David J. Reilly, continued with an informative discussion about an array of topics, including the preferred timing of mediation, confidentiality, and pre-mediation disclosures. The portion of the webinar regarding mediation ended with these panellists expressing their views about things advocates should and should not do to make mediations productive. Ms. Weiss stressed the importance of preparing for mediation. Mr. Reilly and Mr. Sonnenberg each spoke about approaching mediation with a cooperative and creative mindset.

Mr. Fasman next focussed the panellists on employment arbitrations, by asking **Terrance J. Nolan**, of Terrance J. Nolan LLC, to address the impact of the 'Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2022', which amended the Federal Arbitration Act to prohibit mandatory arbitration of sexual assault and sexual harassment disputes. Mr. Nolan identified several issues that will likely need to be resolved in the future. Ms. Weiss addressed arbitrator selection, urging parties to keep an open mind when selecting arbitrators. The discussion closed with extensive commentary by Mr. Reilly and Mr. Sonnenberg about arbitration mechanics, including effective hearing management in a hybrid or remote environment.

Submitted by Holly H. Weiss, ArbitralWomen member, President of HWH Mediation, AAA Arbitrator and Mediator, New York, USA

The Arb Talk event 'The Big Talk' on #BreakTheBias for International Women's Day 2022, on 8 March 2022, by Webinar

The Arb Talk presented 'The Big Talk' — dedicated to the hottest topics in international arbitration and ADR practice, now available on major streaming platforms.

The very first episode of The Big Talk was a roundtable focussed on #BreakTheBias to honour and celebrate the courage of women who strove and are still striving for gender equality all over the world, realised on the occasion of International Women's Day 2022.

The Arb Talk asked three amazing women and professionals at the forefront of diversity and inclusion: Dana MacGrath, Amanda Lee FCIArb and Rekha Rangachari, to share their point of view on the themes of promotion of female practitioners and solutions at hand to achieve gender equality in the fields of international arbitration and ADR practice.

The podcast was introduced and moderated by Ryme Elaoufi, Giada Mulè and Estelle Laurence. You can access the episode from here.

Submitted by Dana MacGrath, ArbitralWomen President and Independent Arbitrator, New York, USA

Women in Disputes event, on 8 March 2022, in London, UK

Left to right: Isabel Asquith, Charlotte McDougall, Mary Young and Josie Welland

On 8 March 2022, Raedas hosted their annual 'Women in Disputes' event, in celebration of International Women's Day. The first in-person IWD event since the pandemic, some 40+ experts from the disputes community met at the AllBright Club in Mayfair for a breakfast panel discussion and networking.

Raedas director **Isabel Asquith** chaired this year's event, themed 'The power of storytelling as a professional and personal tool'. Joining Isabel on panel were **Charlotte McDougall**, communication coach and author; **Mary Young**, dispute resolution partner at Kingsley Napley; and **Josie Welland**, dispute resolution associate at CMS.

The panel engaged in an open and candid discussion around the role storytelling plays in their day-to-day lives, both personal and professional. In particular, the panel shared experiences and practical tips surrounding:

- **Building credibility**: what does successful story telling look and feel like, and how does this differ as we progress through our career?
- **Communicating in a compelling way**, from senior stakeholders to clients.
- **Creating personal impact:** taking control of the narrative, myth-busting, and moving away from stereotypes or preconceptions.
- **Building a personal brand:** the power of authenticity.

The discussion was followed by a lively and engaging Q&A session, and networking.

We look forward to seeing many of you at our 2023 event.

For more information, please visit www.raedas.com. If you would like to be involved in our next event, please contact enquiries@raedas.com.

Submitted by Isabel Asquith, ArbitralWomen member, Director, Raedas, London, UK

ISTAC and Young ISTAC's International Women's Day Webinar: **Women in Arbitration and Business,** on 9 March 2022, by Webinar

Left to right: Aslı Budak, Deniz Özyıldız, Cemile Demir Gökyayla, Zeynep Kalaycı, Ceyda Sıla Çetinkaya

The Istanbul Arbitration Centre (ISTAC) collaborated with Young ISTAC to jointly organise a webinar to discuss women in arbitration and business in Turkey, by touching upon the problems that women face in their careers and the possible initiatives to improve gender diversity in international arbitration.

On 9 March 2022, Young ISTAC hosted a webinar in which a panel of esteemed members of the arbitration community gave their insights, including Professor Dr. **Cemile Demir Gökyayla**, Founding Partner of Demir Gökyayla Law Office and ISTAC National Board Member, **Aslı Budak**, Partner at Hergüner Bilgen Özeke Attorney Partnership, and **Zeynep Kalaycı**, the Head of Legal and Compliance at EnerjiSa Üretim. The discussion was moderated by **Deniz Özyıldız**, the President of Young ISTAC

and an associate at Akıncı Law Office, and **Ceyda Sıla Çetinkaya**, the Executive Board Member of Young ISTAC and an associate at Esin Attorney Partnership.

During the webinar, the panel discussed the number of women in arbitration, especially in decision-making roles, based on the data published by arbitral institutions. While all institutions have shown improvements in 2021, in terms of the number of women in arbitral tribunals, ISTAC has announced the highest rate, with 39%. The panel also discussed further data announced by ISTAC, which revealed that, in 2021, 43% of sole arbitrators appointed by ISTAC were women, and in 31% of the cases settled by 3-member tribunals under the ISTAC Rules, a woman acted as the president of the tribunal. Professor Gökyayla also added that the first arbitrator that was ever appointed by ISTAC was a woman.

During the webinar, the panellists shared their personal experience and struggles in their careers and gave advice to the younger generation on how to play a bigger role in the legal world. Professor Gökyayla described the struggles that women face while working in complex arbitration cases and long-lasting hearings at the same time as raising children. She advised every woman to be a good team member, both at home and at the office, and she explained the importance of sharing responsibility with other team members.

Ms. Budak touched upon the initiatives to increase gender diversity in arbitration and explained that she personally supports the development of her female colleagues by giving equal responsibilities to both men and women during every stage of the arbitration. She also gave examples from the past decade, of bias against women in business and concluded that there have been remarkable improvements.

Ms. Kalaycı, who works in the construction sector, a male-dominated one, described the atmosphere she faces in her working area and noted that women are getting increasingly involved in said sector. She encouraged everyone to stop the bias against women in technical fields and shared her secrets for success in a male-dominated sector.

The panel ended with the panellists giving their foresight. Professor Gökyayla stated: 'I believe that gender discrimination will not be a hot topic in the next decade, as each generation gets more aware about the topic, and our young colleagues will not face the same problems that we did'.

Submitted by Professor Dr. Cemile Demir Gökyayla, ArbitralWomen member, Founding partner, DemirGokyayla, Istanbul, Turkey

Female-Led Events During Tel Aviv Arbitration Day 2022, on 13-16 March 2022, in Tel Aviv, Israel

Several attendees to the Tel Aviv Arbitration Day 2022

13 March 2022 marked the first day of the third annual Tel Aviv Arbitration Week. The exciting week included some of the biggest names in arbitration, including several speakers who are ArbitralWomen members, including keynote speaker **Claudia Salomon**, President of the ICC International Court of Arbitration, **Paula Hodges** QC, President of the LCIA Court, **Ann-Ryan Robertson**, **Julie Raneda** and **Ana Atallah.**

Tel Aviv Arbitration Week included events geared toward future leaders of the arbitration community, including young practitioners and female practitioners. One such event was the Young Arbitral Forum, which took place on 15 March 12022, virtually and in Tel Aviv. The event was organised by ArbitralWomen member **Nuna Lerner**, Partner of Gornitzky & Co. in Tel Aviv, **Galina Usorova**, of Stephenson Harwood, **Kirtan Prasad**, RPC and **Ayelet Hochman**, of White & Case.

The event comprised three sessions: The first was a 'Practical Tips for Young Arbitration Practitioners' panel, where panellists shared experience-based advice and answered the

audience's questions about advancing a career in arbitration, including the 'dos and don'ts' of written and oral advocacy; how to secure an arbitral appointment and how to stand out in a hearing. Galina Usorova moderated the panel, and the panellists included partners and associates from several international firms across all seniority levels, diverse backgrounds and geographical locations.

Claudia Salomon & Nuna Lerner

After a networking break, the sessions resumed with a panel discussing 'Investment Arbitration in Israel: Challenges and Opportunities', including a discussion about the recent Israel-UAE BIT; dispute settlement clauses of Israeli BITs; substantive protections in Israeli BITs, as well as issues and limitations that arose in existing treaty cases. Ayelet Hochman moderated the panel, and the panellists included a partner from an international firm, an ICSID representative and a representative of the Israeli Ministry of Justice.

Following the panels, the audience was introduced to the arbitration search engine, Jus Mundi, by its CEO and Founder, Jean-Remi de Maistre.

Earlier that day, Nuna Lerner, the ICC YAF representative to Israel, hosted an informal women practitioners event, together with Claudia Salomon, **Małgorzata Surdek-Janicka**, Vice President of the ICC Court and **Samantha Nataf**, the ICC Court member from Israel. Claudia and Nuna addressed legal practitioners from Israel and across the globe with a message about the significance of women's leadership and the importance of supporting fellow women practitioners. Following the event, Nuna announced the formation of the 'Israeli Women in Arbitration Network', a network for female arbitration practitioners from Israel or interested in Israel to socialise, learn and grow together. The Network will meet periodically for formal learning events and informal meet-ups in Tel Aviv. If you would like to join the Network, please email Israeli Women in Arbitration Network.

Submitted by ArbitralWomen member Nuna Lerner, partner, Gornitzky & Co, Tel Aviv, Israel

Surfing the Rising Waves of Arbitration in Japan and California, on 14 March 2022, by Webinar

Left to right: Yoshihiro Takatori, Kazuhiko Nishihara, Jeffery Daar, Yoshinori Tatsuno and Miriam Pereira

On 14 March 2022, the Japan Commercial Arbitration Association (JCAA) hosted its first webinar as part of the inaugural California International Arbitration Week of the California Lawyers Association (CLA). The event focussed on the rising waves of arbitration in Japan and California.

The programme was supported by the Japan Association of Arbitrators (JAA), the Japan International Dispute Resolution Center (JIDRC) and the Japan International Mediation Center in Kyoto (JIMC-Kyoto). **Kazuhiko Nishihara**, JIMC-Kyoto's Secretary General, moderated the webinar, which featured opening remarks by **Jeffery Daar**, chair of CLA's Alternative Dispute Resolution Committee, and presentations by **Yoshinori Tatsuno**, dispute resolution partner at Mori Hamada & Matsumoto and JIDR representative; **Miriam Rose Ivan L. Pereira**, ArbitralWomen member, Counsel at Oh-Ebashi LPC & Partners, Public Relations Officer of the JCAA; and **Yoshihiro Takatori**, JAA Executive Director.

Four Big Waves of Arbitration Changes

Yoshinori Tatsuno began by highlighting four big waves of arbitration changes in Japan, while noting some commonalities with California.

Wave 1 — *Rise in international arbitration in Japan*

With the increase in cross-border transactions and globalisation, more Japanese parties have changed their mindset about arbitration and are now willing to resort to arbitration. This has increased the number of cases at the JCAA, 86% of which involved foreign companies or their subsidiaries in Japan for the 2016-2020 period.

Wave 2 — *Substantial changes to the JCAA's arbitration rules to conform to global standards*

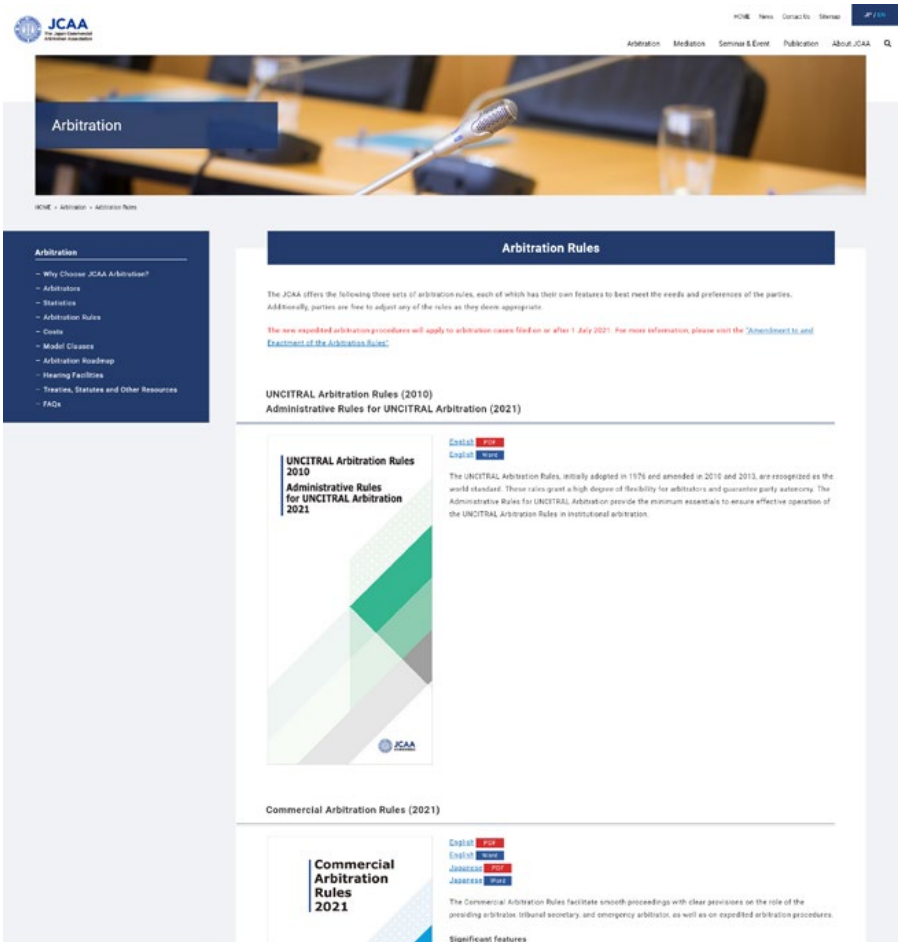
The rules have been updated to address hot issues like emergency arbitration, expedited procedures, multi-party and/or multi-contract arbitrations and the role of tribunal secretaries. Among the three sets of arbitration rules that parties can choose from, JCAA's interactive arbitration rules are unique, in that the arbitral tribunal is encouraged to actively administer its communications with the parties and disclose its preliminary non-binding views about the case. Like the Prague Rules (Rules on the Efficient Conduct of Proceedings in International Arbitration, 2018), the interactive arbitration rules aim to promote procedural efficiency based on a more civil law and inquisitorial style as opposed to a common law or adversarial approach.

Wave 3 — *Establishment of the JIDRC in 2018*

The JIDRC now provides the latest hearing facilities and equipment in Osaka and Tokyo that cater to international arbitration cases.

Wave 4 — *Representation of clients by foreign qualified lawyers in Japan and California*

Both Japan and California have relaxed their rules to allow lawyers not licensed in their respective jurisdictions to represent parties in international arbitration cases if certain conditions are met. In Japan, the Act on Special Measures Concerning the Handling of Legal Services by Foreign Lawyers was amended in 2020 to broadly define 'international cases' to cover not just cases where at least one of the parties has its principal place of business outside Japan, but also cases where a Japanese subsidiary of a foreign parent company is a party.



Commonalities of International Arbitration in Japan and California

Yoshinori Tatsuno observed that there was no significant difference between international arbitration in Japan and California. Their arbitration laws are substantially based on the UNCITRAL Model Law. The JCAA's rules now also reflect world standards comparable to those of other institutions, including JAMS and the ICDR. Moreover, since arbitration proceedings are largely determined by the arbitral tribunal, for Japan-seated arbitrations with one or more non-Japanese arbitrators, the proceedings typically follow the common law style that is typical in California.

One notable distinction, however, is the way Japanese practitioners and arbitrators think, which is influenced by the following two unique features of litigation in Japan: (a) more interactive communication between the parties and the judges involving numerous exchanges of briefs and active issue determination by the judge, who may even administer settlement discussions; and (b) limited document production, because there are no discovery procedures in Japan. These features have influenced the way Japanese practitioners and arbitrators give importance to the communications between the parties and the tribunal (which have also been crystalised in the interactive arbitration rules of the JCAA) and their preference for a more reasonable scope of document disclosure, which, interestingly, US practitioners now tend to favour as well.

Surf's Up for International Arbitration in Japan

To better inform practitioners, Miriam Pereira shared some recent developments at the JCAA. The JCAA has increased its diverse pool of arbitrators to over 400 candidates from over 50 jurisdictions. It has issued several new rules, including the following: (a) the interactive arbitration rules, in 2019 (amended in 2021), for better case and

cost management; (b) the commercial mediation rules, in 2020, to cover both local and international mediation and ensure the enforceability of mediated settlement agreements under the Singapore Convention on Mediation; and (c) the appointing authority rules, in 2021, for *ad hoc* arbitrations. The JCAA has also amended its commercial and interactive arbitration rules in 2021, to expand the application of expedited arbitration procedures to cases worth at least JPY 300M (or approximately USD 2.4M). She also noted the recent use of emergency arbitration procedures, which allow parties to obtain urgent relief even before the constitution of the tribunal.

Ms. Pereira also presented the following three case studies: (a) an arb-med-arb case that showed how the interactive arbitration rules applied and where the parties moved to mediation, which resulted in an award by consent; (b) a case that featured how, in an expedited arbitration, only limited submissions were made and the award was rendered within six months from the constitution of the tribunal; and (c) an emergency arbitration case, where the sole arbitrator was appointed within two business days and the entire proceedings were completed within two weeks.

Online Wave

Thereafter, Yoshihiro Takatori, an independent arbitrator and mediator, spoke about how the JCAA and the JIDRC collaborated on how online and hybrid hearings can be conducted, covering both their technological and procedural due process aspects. The JIDRC's protocol/agreement sample for virtual hearings addresses important concerns such as anti-coaching measures, efficient translation/interpretation, protection of a party's right to make objections, and cybersecurity.

Arb-Med-Arb Wave

Mr. Takatori commented on the JCAA's interactive arbitration and shared his positive experience with the arb-med-arb practice at the JCAA in Japan and JAMS in California as well as his experience in co-mediating a case under the joint protocol by the SIMC and JIMC Kyoto.

He noted that online operations can be the default option for cross-border dispute resolution, considering scheduling flexibility, the more comfort that such setting affords parties in emotional or serious disputes, and the resulting efficiency from the use of technology.

Waves Beyond Covid-19

Post-Covid-19, Yoshihiro Takatori suggested that Japanese judges should study and learn from California's JAMS and ICDR practices. Retiring judges can then later become arbitrators and mediators. He noted, too, that Japan's practice of judicial mediation with a combination of judges and experts can be shared with common law jurisdiction like California and could result in an efficient hybrid protocol. He also discussed the proposed amendment to the Arbitration Act on jurisdiction to create specialised judicial departments in Tokyo and Osaka to facilitate ADR, including international cases.

Other post-pandemic development waves include the potential signing by Japan of the Singapore Convention on Mediation and a new law thereon, the CIArb's training/assessment courses developing a hybrid type of training based on a civil law approach, and the High Technology Dispute Resolution Initiative – UNCITRAL, a project jointly being proposed by Japan and Israel, and which can be used in California.

Panel Discussion Learnings

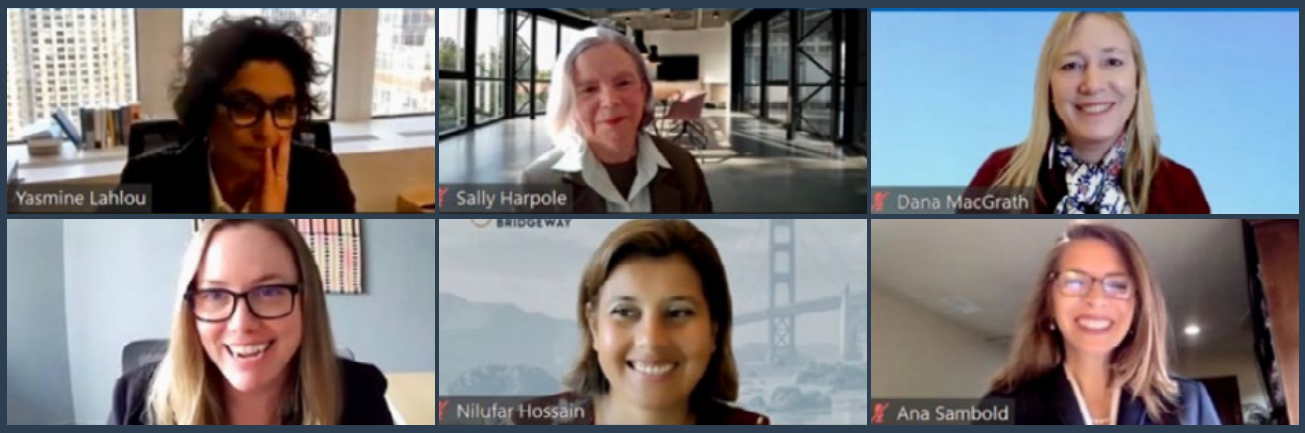
The panel discussion moderated by Kazuhiko Nishihara yielded the following key learnings:

- Interim orders are currently not enforceable in Japan, but will soon be so, when the Arbitration Act is amended.
- Arbitrators may not be challenged solely on the basis of disclosing their preliminary views under the JCAA's interactive arbitration rules. Such disclosure is meant to better manage the case and not prejudge it. Moreover, by opting into these rules, parties also agree to their structure and approach, whereby parties are always given an opportunity to comment.
- As to the conduct of virtual hearings, as a practical tip, coaching can be prevented by ensuring that the witness is alone in the room. Parties can also use a 360-degree camera, which can see all the angles of the room, or three cameras that can capture the face of the witness, the entire room and the computer screen of the witness.
- As to discovery, the IBA Rules on the Taking of Evidence in International Arbitration are commonly used as guidelines in arbitrations in Japan. The scope of the discovery can also be affected by the arbitrator's background, although the current trend is to adopt a moderate approach.
- Both California and Japan can be selected as place of arbitration. Awards rendered in either jurisdiction may be enforced under the New York Convention. Like California, Japan has a pro-arbitration legal framework and many neutral and English-speaking arbitrators. As to the venue of a hearing, the convenience of the parties will drive their choice, considering the location of the arbitrators, counsel, parties and their witnesses, as well as the availability of facilities, which are now readily available in Japan as they are in California, including for online hearings. The place of arbitration will also determine the governing procedural law of the arbitration. As to institutional rules, for a hybrid type or interactive arbitration, parties may opt for the JCAA's interactive arbitration rules.

The webinar concluded with an acknowledgment that there are many opportunities for collaboration and learning between California and Japan, which can then pave the way for a bright future in international arbitration in both jurisdictions.

Submitted by Miriam Rose Ivan L. Pereira, ArbitralWomen member, Counsel at Oh-Ebashi LPC & Partners, Public Relations Officer of the JCAA, Tokyo, Japan

Women in Arbitration: California Stories, on 16 March 2022, by Webinar



Top to bottom, left to right: Yasmine Lahlou, Sally Harpole, Dana MacGrath, Sarah Reynolds, Nilufar Hossain, Ana Sambold

ArbitralWomen was honoured to organise and run a panel as part of the inaugural California International Arbitration Week!

Panellists explained how the diverse composition of the legal community in California, with respect to gender, culture, ethnicity and race, makes it a natural place for parties to arbitrate, particularly cross border disputes involving parties from Asia and Latin America. They also discussed recent initiatives to promote diversity in California and their respective professional paths as practitioners and arbitrators that landed them in California. Finally, panellists highlighted the industry sectors based in California (one of the largest economies in the world!) that increasingly are choosing international arbitration as the go-to dispute resolution method. Speakers included ArbitralWomen Board member **Yasmine Lahlou**, ArbitralWomen President **Dana MacGrath** and ArbitralWomen members **Sally Harpole**, **Sarah Reynolds**, **Nilufar Hossain** and **Ana Sambold**.

Throughout the webinar, helpful links were put in the chat to diversity resources offered by ArbitralWomen, the Equal Representation in Arbitration Pledge, and other organisations to find female arbitrators who are not the 'same handful of women always appointed'.

Stay tuned for the release of the video recording of the webinar panel discussion in due course!

Submitted by Dana MacGrath, ArbitralWomen President and Independent Arbitrator, New York, USA

Debunking Diversity Myths in International Arbitration: Why More Needs to be Done, on 16 March 2022, by Webinar

Left to right: Marcie Dickson, Dana MacGrath, Jacomijn van Haersolte-van Hof, Maureen Ryan and Patricia Shaughnessy

It was an honour to participate in the New York State Bar Association (NYSBA) webinar on 'Debunking Diversity Myths in International Arbitration: Why More Needs to be Done' in recognition of Women's History Month 2022. Panellists included **Marcie Dickson**, **Jacomijn van Haersolte-van Hof**, **Dana MacGrath**, **Maureen Ryan** and **Patricia Shaughnessy**, who reunited on 16 March 2022 to further discuss gender diversity issues, having joined together in Dublin last December 2021 at Dublin International Arbitration Day 2021 (DAD 2021) organised by Arbitration Ireland. The event was the inspiration of NYSBA Executive Committee Member **Edward Lenci** to honour Women's History Month (having led the diversity DAD 2021 panel in Dublin last December) supported by the International Section

and Women in Law Section of the NYSBA. Panellists discussed that, while recent statistics indicate an increasing percentage of female arbitrators appointed (while women are still a minority), it is often the same small handful of women being appointed repeatedly. Therefore, a majority of women in arbitration are still not included in the arbitration club.

It is important to debunk the myth that gender equality has been achieved and that arbitration has become inclusive — the positive statistics about women on arbitral tribunals are superficially appealing, but the reality is most women still are rarely appointed as arbitrator.

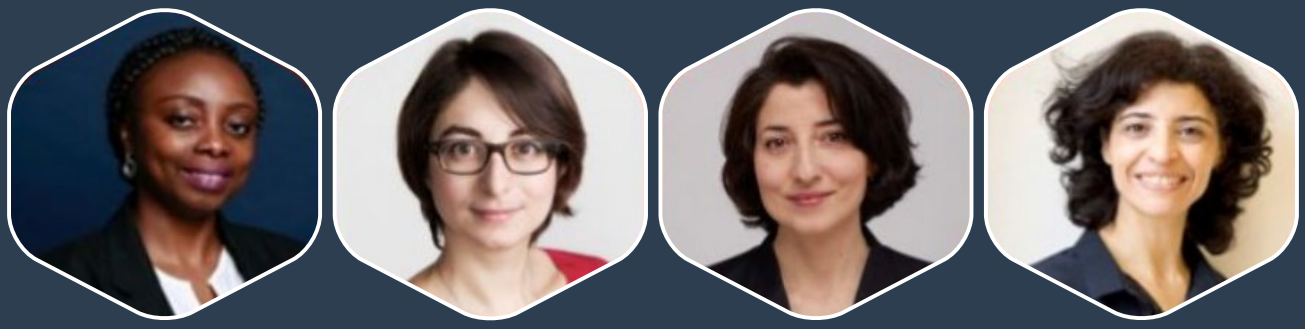
This does not have to be the case. There are ways to help clients and counsel find additional seasoned diverse female arbitrators who have dedicated their career to international arbitration and are well-qualified to serve on an arbitral tribunal.

Some examples of the resources available to find a broader pool of seasoned talented female arbitrators include ArbitralWomen's searchable Members Directory for practitioners, arbitrators and more, the Equal Representation in Arbitration Pledge Female Arbitrator Search Tool, News About ArbitralWomen Members (concise bios of ArbitralWomen female members who recently earned an achievement, award or professional development), the List of Women of African Descent with a U.S. Nexus, and the New York International Arbitration Center (NYIAC) Diversity Corner. There are other resources and research tools to find qualified women and diverse arbitrators, and more are being rolled out each year.

A positive theme ran throughout: We are in a new era today — a new chapter of arbitration history. It is now possible for women to pursue a career in arbitration, and strive to act not only as counsel, but also, someday hopefully as arbitrator.

Submitted by Dana MacGrath, ArbitralWomen President and Independent Arbitrator, New York, USA

Online Dispute Resolution (ODR) Training for small businesses and ADR practitioners across Francophone Africa, on 16 March 2022, by Webinar



Left to right: Sylvie Bebohi Ebongo, Andrea Lapunzina Veronelli, Athina Fouchard Papaefstratiou and Affef Ben Mansour

On 16 March 2022, the Association of Young Arbitrators, Pensbury Attorneys & Solicitors, Africa Arbitration Academy and Africa Arbitration organised an ODR training for small businesses and ADR practitioners across Francophone Africa. The two-hour event was moderated by Dr. **Sylvie Bebohi Ebongo (Partner, HBE Avocats) and focussed on three topics related to virtual arbitration and mediation proceedings.

Andrea Lapunzina Veronelli (Legal counsel, Permanent Court of Arbitration – PCA-, PCA representative in Mauritius) addressed the subject of 'Transition to an entirely virtual dispute resolution method'. She first pointed out that ODR is not completely new, but Covid-19 has significantly accelerated and democratised it. She described how the PCA was able to cater for remote proceedings and how 'documents only' procedures could well become a more usual type of proceedings.

Athina Fouchard Papaefstratiou (ArbitralWomen member, arbitrator, AFP Arbitration)'s presentation, titled 'From online arbitration and mediation to automated dispute resolution' was dedicated to online proceedings and fast-track arbitration, such as the European Online Dispute Resolution (ODR) platform or Kleros and similar mechanisms. She also highlighted the specific ADR rules available for small claims. Ultimately, Athina Fouchard Papaefstratiou explained how artificial intelligence participates in the resolution of disputes through new platforms such as Adjusted Winner or Predictice.

Dr. **Affef Ben Mansour** (ArbitralWomen Board member, independent counsel and arbitrator)) closed the training with a presentation on 'Means of responding to technical and legal challenges related to virtual proceedings'. She shared her experience on the organisation of virtual hearings during the pandemic and how arbitration institutions have quickly amended their rules to adapt to the new era of virtual hearings, which moved from an exception to a more expanded practice. She also presented practical tips on virtual hearing preparation.

Submitted by Diana Karibian, intern, ABENMANSOUR, Paris, France

Swiss Chalet Debate, on 17 March 2022, in Zurich, Switzerland

Left to right: Anya Marinkovich, Augustiin Barrier, Benjamin Moss, Katherine Bell, Maylis Noth and Sara N Seguin

On 17 March 2022, the ICDR Young & International, acting through its Global Advisory Board members **Anya Marinkovich** (Senior Associate, Bär & Karrer, Geneva) and **Benjamin Moss** (Senior Associate, Sidley, Geneva), organised and hosted the 2022 Swiss Chalet Debate. The event brought together a panel of distinguished international practitioners based in Geneva, Zurich, and Paris, who discussed the *jura novit arbiter* question and the publication of arbitral awards.

The session was organised as a mock rapid-fire debate where the panellists argued pre-assigned positions on the following issues:

1. Should arbitral tribunals be permitted, and do they in fact have an obligation, to rely on any relevant element of the applicable law, even if none of the parties have pleaded it? And:
2. Should arbitration institutions systematically publish (anonymised) awards rendered in international commercial arbitrations?

It should be noted that the debaters were asked to take positions that did not necessarily reflect their personal views.

Ms. Marinkovich introduced and acted as moderator for the first debate. Arguing in favour of a broad application of *jura novit arbiter* was Ms. **Katherine Bell** (Partner, Schellenberg Wittmer, Zurich), who highlighted that arbitral tribunals are called to act impartially and make objective determinations of the law and are in the best position to apply the law correctly and in its entirety. She also pointed to the fact that the application of *iura novit arbiter* does not only ensure a correct application of the law, but also a uniform application of the law. On the other side of the debate was **Sara Nadeau-Seguin** (Partner, Teynier Pic, Paris), who countered that fundamental principles of arbitration include operating fairly towards the parties and respecting due process, which includes the right to be heard and be afforded an opportunity to present one's case. If arbitrators go beyond their mandate and the parties' submissions by applying legal principles that were not argued, this could result in the setting aside of the arbitral award or prevent its recognition and/or enforcement.

The second debate was introduced and moderated by Mr. Moss. Arguing in favour of the systematic publication of arbitral awards, **Maylis Noth** (Senior Associate, Bär & Karrer, Geneva), explained that there were a number of benefits that could be achieved from publication, including (i) the development of international arbitration law and *lex mercatoria*, (ii) increased certainty and predictability, as well as (iii) enhanced consistency of decisions and legitimacy of arbitration. Her opponent, **Augustin Barrier** (Counsel, Lalive, Geneva), argued that, while there has been a lot of talk of publication of awards to improve the transparency of international commercial arbitration, one must consider that users choose arbitration in large part for its confidentiality. He also noted that the doctrine of precedent applicable in state courts is not applicable in international arbitrations and, therefore, it is not clear that publication would actually benefit the legal community.

The debate took place at the offices of Bär & Karrer in Zurich and was followed by cocktails and a fondue dinner sponsored by the firm in its rooftop chalet (pictured).

ICDR Young & International was very happy with the success of this event for the second year in a row (after a brief hiatus), so stay tuned for a 2023 version!

Submitted by Anya Marinkovich, ArbitralWomen member, Senior Associate, Bär & Karrer, Geneva, Switzerland

'Women in Business' Series: In Conversation with Ayse Lowe, on 17 March 2022, by Webinar

Left to right: Ayse Lowe and Elena S Rey

As part of a firm-wide celebration of Women's History Month, international law firm Brown Rudnick hosted the latest instalment of its 'Women in Business' series on Thursday 17 March 2022: 'In Conversation with Ayse Lowe'. ArbitralWomen member **Ayse Lowe** is the global head of origination at Bench Walk Advisors LLC in London, a global legal finance firm launched in 2017. The virtual event was moderated by **Elena Rey**, Partner at Brown Rudnick in the Special Situations, Distressed Debt and Trading Practice.

Ayse and Elena discussed maintaining a work-life balance, experiences of being a woman in law and finance and overcoming challenges to forge a successful career in a highly competitive industry. The webinar began with an explanation of litigation finance, a unique industry that brings together the law, finance and insurance. It is an intellectually challenging, but also highly commercial space that has grown enormously in the last decade and developed into its own asset class.

Ayse gave an overview of her career journey so far, from wanting to be a diplomat, to becoming a lawyer, a broker and later a funder, as well as the transferrable skills she gained along the way. Ayse advised those starting out in their career to consider their strengths and advocated for taking a risk and changing your career path if it does not feel right.

Discussing her experiences of being a woman in the financial and legal world, Ayse described some of the challenges and prejudices she has faced, particularly as a working mother, and advised younger women to always stand up for themselves, to never try to justify themselves and to have confidence in their abilities and their place at the table.

Overall, Ayse believes these industries need to be more respectful of women with young families and to support women returning to work after maternity leave. 'Just because I've had a child doesn't mean I lost half my brain!' Ayse said.

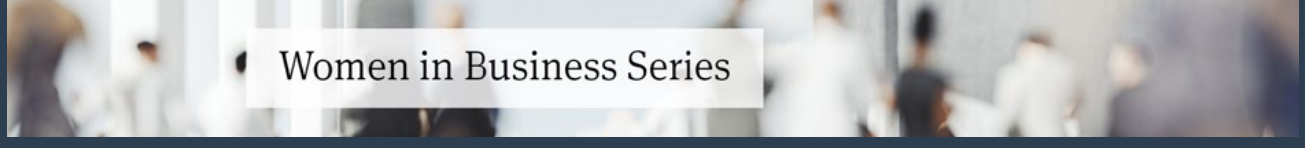
On maintaining a work-life balance, Ayse called attention to the ways in which Covid-19 has increased flexibility for working parents, which means that she can work from home while caring for her son. Covid-19 revealed everyone's humanity, making clients and colleagues more respectful of people's personal lives. The pandemic has proven that many workers in these industries can be just as productive working remotely as they are in the office environment. In addition, being able to speak at three conferences per day in Hong Kong, Vienna and Istanbul was another benefit of remote working, particularly for a parent who does not have the ability to travel all the time and would previously have passed on the opportunity.

While Ayse enjoyed spending more time with her son during lockdown (despite the challenges of home schooling), she also highlighted the importance of in-person office interaction, particularly in the legal profession. For example, junior team members must have opportunities to engage with and learn from more senior people, to properly develop.

During the Q&A, Ayse gave further advice on dealing with sexism in the workplace, how to stand up for yourself and the power that you have, and the lessons learned during Covid-19 that we can take forward into 'the new normal'.

Brown Rudnick's Women in Business series, part of the firm's wider Diversity, Equity and Inclusion programme, has been running for six years, featuring inspirational guests from various areas of the business community, speaking about their careers, business pursuits and challenges. Previous speakers include Baronness Jenkin of Kennington, former Home Secretary Amber Rudd, Deborah Meaden, entrepreneur and Dragons Den investor and designer Cath Kidston, MBE (more information can be found here).

Submitted by Ayse Lowe, ArbitralWomen member, Global Head of Origination at Bench Walk Advisors, London, UK, and Elena Rey, Partner at Brown Rudnick LLP, London, UK



The Intersection of International Arbitration and Sustainable Development, on 18 March 2022, in Sarajevo, Bosnia and Herzegovina

On 18 March 2022, highly esteemed scholars and practitioners of international arbitration converged in Sarajevo for the international conference dedicated to cutting-edge topics related to the Intersection of International Arbitration and Sustainable Development.

The conference was part of the annual training and pre-moot programme, co-organised by the U.S. Department of Commerce Commercial Law Development Program (CLDP), the Faculty of Law of the University of Zenica, GIZ Association ARBITRI and the American Chamber of Commerce Bosnia and Herzegovina Sarajevo. The event was attended by Vis Moot teams from Azerbaijan, Bosnia and Herzegovina, Georgia, Germany, Kosovo and Saudi Arabia, representatives of the business sector and legal practitioners.

Following the opening remarks from the organisers and the U.S. Embassy in Bosnia and Herzegovina, the conference kicked off with two keynote speeches delivered by **Steven Finizio** (Wilmer Hale, London) and Prof. Dr. **Helmut Ruessmann** (Saarland University). The keynotes were dedicated to the key issue underlying the procedural issues in the 2022 Vis Moot problem: the law applicable to the arbitration agreement. The two speakers approached the topic from two distinct perspectives: that of arbitration practitioners and academia, highlighting how the diverging views can lead to significantly different conclusions on the proper law of the arbitration agreement.

The first thematic panel was dedicated to: 'Arbitrating for a Greener Future: How ESG Disputes are Changing the Landscape of International Arbitration'. The co-panellists, **Nevena Jevremović** (University of Aberdeen) and **Kabir Duggal** (Arnold & Porter), discussed the implications of the sustainable development goals and green energy transition on the landscape of Investor-State Dispute Settlement (ISDS). In addition, they noted the importance of simultaneous procedural and substantive reform in this area to ensure effective solutions.

Speaker: Steven Finizio

Left to right: Arne Fuchs, Fahira Brodlija, Catherine Rogers

The second panel addressed the paradigm shift in the role of investors and States in investment arbitration. **Arne Fuchs** (McDermott Will & Emery), Prof. **Catherine Rogers** (Bocconi University) and **Fahira Brodlija** (GIZ) discussed the emerging trends in treaty design and treaty interpretation in disputes related to environmental issues and other areas of public interest. The panellists noted that the States are placing more emphasis on protecting their right to regulate, particularly by limiting access to ISDS and by reforming certain key substantive investment protections, such as the Fair and Equitable Treatment (FET). They cautioned that the simple modification of treaty language without a broader consideration of practical issues may lead to inconsistent interpretations, which led to the criticism of the existing system.

The final session, and one that was of most interest for the law students in the room, was dedicated to taking the first steps in a career in international arbitration. ArbitralWomen Board member **Amanda Lee** shared direct and practical tips on how young and aspiring practitioners can 'get their ducks in a row' to be ahead of the curve and better position themselves in a professional setting. Honourable **Virginia M. Covington** highlighted the significant advantages the students already possess that can be leveraged to accelerate their path towards a successful career in international arbitration. She concluded by reflecting on some of her experiences hiring and training young interns and judicial clerks, pointing out some common mistakes that should be avoided to leave a good impression.

This overview only scratches the surface of the nuanced and informative discussions of the conference.

Click here to view the full recording of the programme.

Submitted by Fahira Brodlija, Legal advisor, GIZ Bosnia and Herzegovina

ICC YAF Cube House, on 25 March 2022, by Webinar

Left to right: Jon Nicklin, Anran Zhang, Eugene Thong, Yan Wu, Wenwu Xie, Elizabeth Chan (not pictured: O. Marx Ikongbeh)

On 25 March 2022, Elizabeth Chan (ArbitralWomen Board member, and Co-Director of Young ArbitralWomen Practitioners – YAWP) facilitated the second-ever session of ICC YAF Cube House.

The ICC YAF Cube House offers informal, small-group discussions involving no more than 10 participants on arbitration topics in different languages. The purpose is to give arbitration practitioners the opportunity to practise their language skills in a professional context. The sessions are led by a facilitator, who chooses the topic, and engages participants in an active discussion for an hour.

The subject of Elizabeth's session was on the basics of international investment arbitration, from a Hong Kong perspective. The participants engaged in a lively discussion on topics including States' use of international investment agreements (IIAs) to attract foreign investment, the protections and remedies that IIAs offer to investors, and recent trends relating to investor-State dispute settlement (ISDS).

Submitted by Elizabeth Chan, ArbitralWomen Board member, YAWP – Young ArbitralWomen Practitioners Co-Director, Registered Foreign Lawyer, England and Wales, Allen & Overy, Hong Kong

Diversity in international arbitration matters: Launch of the Delos universal open access arbitrator database, on 22 March 2022, by Webinar

Delos has created a universal open access database of arbitrator candidates, in a bid to open a wider pool of talent and foster greater diversity of arbitrators. The database is available here. It is free to use, and any arbitrator —or aspiring arbitrator— can appear in it (you can register here and fill out your profile here). You do not need to have sat as an arbitrator before in order to register, and there is no charge to register or to access the profiles.

The Delos Arbitrator Database was launched at a webinar on 22 March 2022. The event featured a keynote by Professor **Pierre Tercier**, who reflected on the importance of diversity in all walks of life, including dispute resolution. Prof. Tercier made the point that arbitration has become not just a method of resolving disputes, but also a way to render justice. As he noted, 'it is important that justice is administered by people representing the most varied and broad criteria'. Having diversity in the community of arbitrators, he said, is necessary for the quality of justice.

May Tai, ArbitralWomen member and member of the Delos Board, reflected on the power of a hypothetical tribunal including Prof. Tercier and herself. That tribunal would represent different genders, different ages, different cultures and ethnicities, common and civil law backgrounds, and a range of languages and legal qualifications. All of these different inputs would, she said, render a more focussed, nuanced and targeted award than an award by a tribunal of three males from the same country, same schools, and same legal background.

Left to right: Pierre Tercier, Amanda Lee, Hafez Virjee, May Tai and Kabir Duggal

Hafez Virjee, President and co-Founder of Delos, walked viewers through the new database, demonstrating how to create an entry. Hafez emphasised that arbitrators can enter as much or as little personal information as they would like, including details of their experience, countries of qualification, nationality, gender and ethnic background. None of this information is compulsory, but Delos hopes that this format will result in a database that is truly diverse in all areas. As such, it would reflect the parties to the disputes that are resolved by arbitration all over the world, and help those parties to choose arbitrators who are best suited to their specific disputes.

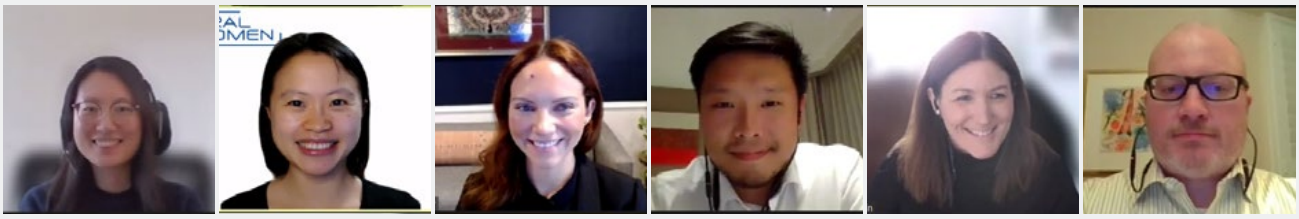
There followed a lively Q&A session, and closing remarks by Dr. **Kabir Duggal** and ArbitralWomen Board member **Amanda Lee** on behalf of sponsors RAI and REAL, and Careers in Arbitration, respectively. Herbert Smith Freehills was another sponsor. Delos is also grateful to TDM and OGEMID for their support of this diversity initiative and related arbitrator database.

A recording of the event is available here.

Submitted by May Tai, ArbitralWomen member, member of the Delos Board, Partner, Herbert Smith Freehills, Hong Kong

Contributed by YAWP

M&A Disputes in an Uncertain World, on 23 March 2022, by Webinar



Left to right: Sheng Bi, Elizabeth Chan, Heather Bolner, Zach Li, Anne-Marie Hitchin, Brent Carlson

The volume and value of the global M&A market reached unprecedented levels in 2021, a record 63,000 transactions valued at USD 5.9 trillion. As deal volumes rise, inevitably post-transaction disputes are expected to also rise.

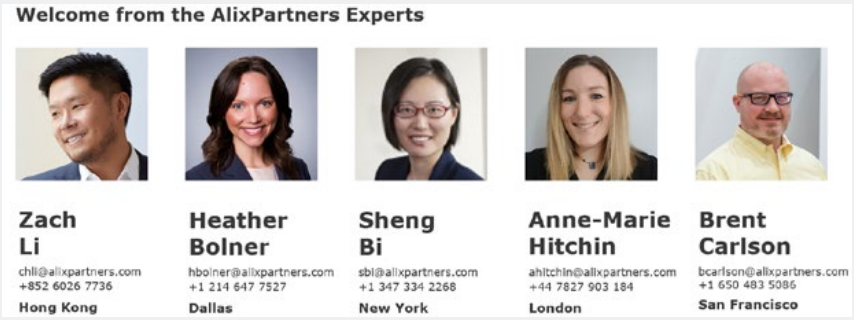
In March, AlixPartners hosted an M&A international arbitration damages workshop in collaboration with the Equal Representation in Arbitration Pledge Young Practitioners Subcommittee (YPSC) and Young ArbitralWomen Practitioners (YAWP), and supported by the Rising Arbitrators Initiative (RAI), Racial Equality for Arbitration Lawyers (R.E.A.L), the Moot Alumni Association (MAA) and the Transnational Dispute Management (TDM) Law Journal.

The AlixPartners Disruption Index tracks business sentiment with a survey of 3,000 business executives around the globe. On M&A activities the Disruption Index found:

- The biggest challenges facing executives going into 2022 was the disruptive technology that their businesses must confront in the years ahead.
- The long-term potential of disruptive technology likely led investors to seek exposure to the technology sector. This is borne out by the value of technology sector deals, which comprised over one-fifth of the global 2021 M&A transaction value, the largest of any sector.

In this workshop, AlixPartners experts examined a few real-world case studies covering M&A disputes arising from breach of warranty covenants and assessing alleged fraud issues post-acquisition. Below are three takeaway points from the discussion among AlixPartners experts in the webinar:

- In a post-M&A purchase price adjustments dispute, the two commonly used damages frameworks are lost profits and diminution in value. The case study discusses the financial information pre – and post-closing and specifically, how to construct proper but-for and actual scenarios under



these two damages approaches.

- In building a creditable counterfactual scenario, it is important to consider whether the chronology of events in the counterfactual timeline is plausible, in terms of timing and order.
- Fraud cases require painstaking assembly of a clear and convincing picture, much like putting together a mosaic. It may well be the case that no one piece of information, evidence, or red flag stands independently. However, a clear picture can emerge when placed into context with other information.

A recording of the webinar can be viewed here.

Submitted by **Zach Li**, Director, AlixPartners, Hong Kong

23rd Annual IBA Arbitration Day 2022, on 23-24 March 2022, in Istanbul, Turkey

Lucy Reed led the first panel as a proponent for a more robust First Procedural Order and Timetable, providing for a greater tribunal management role. The options she encourages include: pre-scheduled short Case Management Conferences (to keep minor procedural issues from becoming contested applications), a 'Kaplan Early Opening', a pre-hearing 'Reed Retreat' of the tribunal to discuss the case and flag questions for counsel, a pre-scheduled Settlement/Mediation window (without a tribunal role), and pre-scheduled deliberation dates.

ArbitralWomen member **Gabrielle Nater-Bass** was part of the second panel, chaired by **Mark Friedman** and joined by **Smitha Menon** and **David Dearman**. Mark Friedman drew the participants' attention to the still too often overlooked issue of quantifying damages in international arbitration and presented his suggested approach for a solution: A Quantum Academy, designed as a multi-day training course with involved damage experts. This idea was backed up by Gabrielle Nater-Bass, who, as a Co-Chair of the ICCA-ASIL Task Force on Damages in International Arbitration (Task Force), has been working towards the same goal: Fostering a more robust and uniform approach to damages. To achieve this goal, Gabrielle Nater-Bass explained, the Task Force brought together a panel of leading legal and economics experts from jurisdictions across the globe to work on the development of the new ICCA-ASIL Damages in International Arbitration App, also known by its acronym 'DIA' (icca-asil-damages.com). After having introduced the audience to the general structure of the DIA App, which is built around the three categories 'Procedural', 'Legal' and 'Valuation', Gabrielle Nater-Bass provided a live demonstration of the DIA App and its intuitive search and navigation features. Using the example of contractual limits on damages, the audience was shown how the DIA App enables its users to quickly obtain an overview and better awareness for relevant topics, thanks to its interactive design. Having been tailored to all kinds of users, the DIA App will help economic experts to sharpen their understanding for legal aspects and, vice versa, provide legal practitioners with a more informed sense for economic aspects relevant to their arbitration. Referring to the objective of Mark Friedman's suggested Quantum Academy, Gabrielle Nater-Bass concluded that the DIA App and the Quantum Academy both provide a solution to achieve the same goal, while starting at different points. As such, they will help to overcome the (sometimes too big) gap between economics and legal aspects when it comes to quantum questions in arbitration.

The third panel titled 'Rethinking the justification for the preparation and presentation of witness testimony' was moderated by ArbitralWomen member

Left to right: Mark Friedman, Gabrielle Nater-Bass, David Dearman and Smitha Menon

Left to right: Toby Landau, Alexandra Johnson and Asli Yilmaz

Alexandra Johnson, who introduced the Session Chair **Toby Landau** QC. He proposed a wholesale reconsideration of the way witness evidence is commonly prepared and presented in international arbitration proceedings, to explore ways to tailor witness testimony to the needs of each particular case, and to maximise its value. More specifically, after having identified the problems and shortfalls of the current practices impacting the relatability of witness testimony and the related time and costs of the process, Toby Landau QC put forward proposals in four key areas: First, he suggested that the initial identification of potentially relevant witnesses could be re-characterised as a collaborative process between the tribunal and all parties. Second, he proposed early and on-going case management conferences to categorise witnesses depending on the nature of their evidence (e.g. providing a true recollection of disputed facts in the absence of contemporaneous documents, or explaining contemporaneous documents, or providing technical explanations, etc.) and determine the best suited procedure to examine each witness category. Third, he suggested that arbitral tribunals provide tailored directions on how witnesses should be proofed and their statements prepared, taking into account the recommendations of the ICC Task Force on the Accuracy of Fact Witness Memory in International Arbitration. Fourth, he advocated for a more active supervision by tribunals of the scope of cross-examination, in terms of the areas to be covered or not covered.

Alexandra Johnson then provided comments on those propositions, submitting that there were two areas where some further steps could be taken to address the problems identified by Toby Landau QC, based on a more proactive role by the arbitrators, namely (i) the selection of the witnesses to be heard at the hearing and (ii) the examination of the witnesses by the tribunal. First, regarding the selection of the witnesses to be examined at the hearing, she questioned whether the current accepted process consisting in asking each side to identify, within a certain deadline set in the procedural timetable, the witnesses whose appearance is requested at the hearing, should not be reversed in certain cases by having the tribunal first draw a list of the witnesses it wishes to hear at the hearing, before giving the parties the possibility to the parties, yet retaining the final word on the list. Second, she suggested that the direct questioning of witnesses by the tribunal before the cross-examination or follow-up question by counsel could be worth considering in certain cases, provided that it is discussed with the parties well in advance of the evidentiary hearing, in order to avoid or limit leading questions by counsel which can influence the mechanisms of memory retrieval by the witnesses and their answers. Finally, she highlighted the importance to also consider compliance mechanisms to ensure the efficacy of the measured proposed, in particular regarding the preparation of witness statements, and suggested that inspiration could be taken from the recent Practice Direction issued by the English Business & Property Courts.

Last but not least, **Asli Yilmaz** presented the main findings of the ICC Report on the Accuracy of Fact Witness Memory in International Arbitration, highlighting the importance of the Report in forcing practitioners to reconsider aspects of proceedings that had been taken for granted. She however underlined that the Report does not purport to undermine the usefulness of witness testimony or otherwise suggest measures that should be adopted in every instance, but is rather aimed at raising awareness on the scientific research regarding witness memory and the distorting effects that also exist in the sphere of international arbitration and provide the arbitration community at large with a tool kit and suggested steps that may be taken to minimise the risk of memory distortion of witnesses.

Submitted by Lucy Reed, Arbitrator, Arbitration Chambers, New York, USA, Gabrielle Nater-Bass, ArbitralWomen member, Partner, Homburger, Zurich, Switzerland and Alexandra Johnson, ArbitralWomen member, Partner, Bär & Karrer AG, Geneva, Switzerland

Vis East Moot, from 27 March to 3 April 2022, in Hong Kong

The Oral Arguments in the 19th Vis East Moot took place in Hong Kong from 27 March through 3 April 2022. After 311 arguments spanning four days of general rounds and two days of elimination rounds, the team that prevailed in the Final Oral Argument was Singapore Management University. Oral advocates **Dawn Wee** and **Elizabeth Wee** edged out their opponents **Brynnie Rafe** and **Mudit Dhami** from Monash University of Melbourne to take home the Eric Bergsten Award.

This year's Problem concerned palm oil and was heard under the Rules of AIAC. Dr. **Dorothee Ruckteschler** of Germany and Dr. **Jane Willems** of France joined Tribunal Chair Datuk Dr. **Prasad Sandosham Abraham**, Deputy Director of AIAC in Kuala Lumpur, to judge the Final Argument. Professor **Jeff Waincymer**, originally scheduled to serve on the Tribunal, had to recuse himself at the last moment, when his former university made it to the Final Round.

The Neil Kaplan Award for Best Oral Advocate went to **Ida Pawlack** of Westfalische Willems Universitat Munich, with **Luis del Rosario** of Fordham, and **Florian Illner** of Freiburg as first and second runners-up.

The David Hunter Award for Best Claimant's Memorandum went to Ludwig-Maximilian's-Universität München, with University of Zurich and Chinese University of Hong Kong as first and second runners-up.

The Fali Nariman Award for Best Respondent's Memorandum was awarded to Heidelberg University, with University of Vienna in second place and Albert Ludwigs Universitat Freiburg taking third.

The Star Arbitrators of the 19th Vis East Moot were **Derya Gurzumar** of Turkey and **Paul Huck** of the U.S.A.

There was no Spirit of the Moot awarded this year. Instead, those attending the Awards Ceremony were asked to pause briefly to think of the Ukrainian students who were unable to participate in this year's Moot.

Left to right: Sherlin Tung, Louise Barrington, Lynn Thorburn and Maricel Somerville

This was the third Virtual Vis East, with all arguments and peripheral activities taking place online via Zoom. Hopes of a face-to-face competition were dashed this year when Covid restrictions in Hong Kong and in the teams' home countries made travel impossible. Even the Host Managers this year had to operate from separate rooms, which complicated the exercise dramatically.

The dedication of the Vis East Moot organisers and the nearly 400 arbitrators won the day, and the Vis East Moot was able to maintain its tradition of 'zero truncated tribunals'. Every tribunal was complete with three judges, thanks to a phalanx of spares standing by at home, some even setting alarms at 4 am to help out. In return, the arbitrators were treated to talented, prepared and eloquent counsel, arguing fine and novel points of arbitration procedure and CISG law. With 450 oralists participating from 39 jurisdictions, before nearly 400 professional arbitrators and arbitration counsel from every continent.

This year's arbitrators were particularly effusive in their praise of the teams. One frequent refrain was, 'I wish some of the counsel that appear before me in real arbitrations were as well prepared as these students'.

At the livestreamed Awards Ceremony, Vis East Moot Director **Louise Barrington** congratulated all the teams, arbitrators, coaches and supporters for making Vis East 19 a great success. She closed the proceedings with a fervent wish: 'Next year, Vis East 20, live and face-to-face in Hong Kong!'

Submitted by Louise Barrington, ArbitralWomen Co-founder, Director of Vis East Moot Foundation

Investment Arbitration Basics, from a Hong Kong Perspective, on 28 March 2022, by Webinar

On 28 March 2022, Elizabeth Chan presented a webinar to the University of Hong Kong Faculty of Law LLM in Arbitration and Dispute Resolution, providing an overview of Investor-State Dispute Settlement (ISDS), with a particular focus on ISDS issues relevant to Hong Kong.

In her overview of ISDS, Elizabeth described three aspects of ISDS. First, she addressed the international legal framework that allows international investment arbitration to exist. In this section, she painted a brief history of how States have used international investment agreements (IIAs) as a way to attract foreign direct investment. She also described the global network of bilateral investment treaties (BITs) and treaties with investment provisions, and their proliferation in recent history. Second, she discussed common investor protections found in IIAs and the types of remedies that ISDS can offer investors. She also described the types of investors that have most frequently used ISDS, as well as identified industry sectors where ISDS is commonly used and the types of investments that are typically protected. Finally, she described recent and ongoing reforms of the ISDS system.

Readers may have been surprised to learn about the many connections ISDS has to Hong Kong. For example:

- The first known investment treaty claim was brought by a Hong Kong-registered company under the Sri Lanka-UK BIT in *Asian Agricultural Products Ltd v Republic of Sri Lanka*.
- One of the most well-known ISDS cases is *Phillip Morris Asia Limited v The Commonwealth of Australia*, which involved a challenge to Australia's plain-packaging laws for tobacco products. This arbitration was brought under the (earlier) Australia-Hong Kong BIT.
- Hong Kong's BIT with the United Arab Emirates is one of the first BITs to introduce mandatory conciliation, where the State may require the investor to engage in mandatory conciliation before they can obtain recourse to arbitration.

Elizabeth concluded the webinar by encouraging everyone to learn more about ISDS and to engage in conversation about the relevance of ISDS to Hong Kong/Mainland China and other Chinese-speaking parts of the world.

Submitted by Elizabeth Chan, ArbitralWomen Board member; YAWP – Young ArbitralWomen Practitioners Co-Director; Registered Foreign Lawyer (England and Wales), Allen & Overy, Hong Kong

PARISARBITRATIONWEEK

The sixth – and the largest yet – edition of the Paris Arbitration Week (PAW) took place in Paris from 28 March to 1 April 2022, a unique event gathering thousands of participants from all over the world in the international capital of arbitration, and offering a wide range of passionate debates, practical workshops and relaxing social and networking events to the entire arbitration community.

With 71 official partners, PAW 2022 saw 114 official in-person and/or virtual events in just one week, with at least 30 more events taking place unofficially and roughly 37 of them featuring over 45 ArbitralWomen speakers/moderators.

This 2022 edition showcased a variety of themes, including climate change, the impact of Russian sanctions on international arbitration, construction disputes, blockchain and cryptocurrencies, arbitration in Africa, sports and space arbitration, as well as the first ever arbitration conference on the metaverse! We are happy and grateful that a number of ArbitralWomen participants — including within the PAW Organising Committee — have prominently contributed to the quality of those sessions.

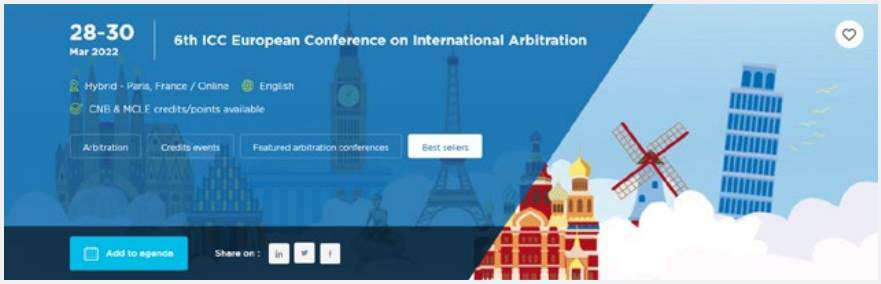
Of course, PAW 2022 also spotlighted PAW's fundamental commitment to diversity through the inspirational keynote delivered by **Melanie van Leeuwen**, partner at Derains & Gharavi and Chair of the ICC Commission on Arbitration and ADR. Melanie focussed on the significant — but often underestimated — impact of the diversity of arbitral tribunals on the quality of international arbitral awards. 250 people signed up to hear Melanie's keynote during PAW 2022 opening session, and another 150 have so far viewed the recording that can be found on PAW Youtube channel. We truly hope that Melanie's message will make its way through the arbitral community and beyond.

Finally, PAW could not ignore the recent Ukrainian events and ensuing humanitarian crisis, and chose to help those whose lives and livelihoods are at risk by supporting the action of the Red Cross. We take this opportunity to thank all contributors.

PAW 2022 was a great success, and we are very much looking forward to PAW 2023: *rendez-vous* in Paris from 27 to 31 March 2023! Meanwhile, we wish you a good read of selected reports on PAW 2022 events featuring ArbitralWomen members. A complete calendar of PAW2022 events can be found here.

Submitted by Sabrina Aïnouz, ArbitralWomen member, Partner at Squire Patton Boggs, Paris, France and Marily Paralika, ArbitralWomen member, Partner at Fieldfisher, Paris, France, both Vice-Presidents of the Paris Arbitration Week Board

6th ICC European Conference on International Arbitration, on 28-30 March 2022, hybrid – Paris, France and Online



On 28 March 2022, the ICC opened Paris Arbitration Week 2022 (PAW) with the annual ICC European Conference on International Arbitration, which has become a 'must attend' event for arbitration professionals focussing on latest developments of arbitration across Europe. The sixth edition of the conference gathered almost 200 participants from all over the world, in person and online.

Alexander G. Fessas, Secretary General of the ICC International Court of Arbitration, opened the conference. Speaking on behalf of the ICC arbitration community, he noted: 'We are defined by our global impact'. He added that PAW is about connecting the world of arbitration and ADR by sharing, by learning (and by celebrating!) together.

The conference started with a fireside chat between **Claudia Salomon**, President of the ICC International Court of Arbitration, and **Philippe Varin**, Former Chairman of the Board of Suez. The dynamic and insightful conversation focussed on the shifting geopolitical landscape and how ICC can fulfil its mission of promoting peace and prosperity and help business to navigate rough waters.

The first panel, moderated by **Massimo Benedettelli**, discussed the evolution of dispute resolution clauses over the past ten years, with a focus on pathological and hybrid arbitration clauses, multi-tier dispute resolution clauses and accelerated procedures, including an update on the use of ICC Expedited Procedures in International Arbitration, which proved that users fully endorse them. Panellists discussed how the available tools offered by the ICC may contribute to procedural efficiency.

The second panel, moderated by **Inka Hanefeld**, analysed how industries have been and are reacting to the various disruptions over the past two years, including the Covid-19 pandemic and geopolitical developments, such as the Russian war against Ukraine. The panellists discussed what disputes may arise as a result of such disruptions, with a particular focus on life sciences, gas-pricing, construction and mining sectors, as well as in post M&A contexts. Among others, the panellists discussed the suggestion of creating a distinct ICC service that provides parties in these times of fast-paced changes with an expedited, early, objective assessment of their claims and defences by experienced senior dispute resolution practitioners, in order to enable them to take an informed decision as to the most efficient and commercially sensible way forward, before potentially engaging into further ADR and/or arbitration proceedings.

The third panel, moderated by **Crenguta Leaua**, was dedicated to the topic of metaverse and is reported below by **Elizabeth Chan**.

The other conference speakers were: **Ashleigh Brocchieri**, **Elizabeth Chan**, **Stephanie Collins**, **Alexis Foucard**, **Beata Gessel-Kalinowska vel Kalisz**, **Sophie Goossens**, **Bernard Hanotiau**, **Samaa A. Haridi**, **Matthias Kuscher**, **Isabelle Michou**, **Denis Parchajev**, **Maria Irene Perruccio**, **Mercedes Romero Iglesias**, **Yat Siu**, **Marion Smith**, **Flávio Spaccaquerche Barbosa** and **Elina Zlatanska**.

Submitted by Inka Hanefeld, ArbitralWomen member, Founding and Managing Partner, HANEFELD, Hamburg, Germany and Maria Hauser-Morel, ArbitralWomen member, Counsel, HANEFELD, Paris, France

Inka Hanefeld

Debate on Metaverse: Will Arbitration be the Arena of Web 3.0 Conflict? A Dispute Resolution Minefield Coming from the Future, on 28 March 2022, hybrid, in Paris, France and Online

On 28 March 2022, the 6th ICC European Conference was held as part of Paris Arbitration Week 2022 (PAW 2022). The panel titled 'Will Arbitration be the Arena of Web 3.0 Conflict? A Dispute Resolution Minefield Coming from the Future' featured speakers including Professor **Crenguta Leaua**, Founding Partner, Leaua Damcali Deaconu Paunescu – LDDP; **Sophie Goossens**, Partner, Reed Smith; **Elizabeth (Lizzie) Chan**, ArbitralWomen Board member and Registered Foreign Lawyer, Allen & Overy; and **Yat Siu**, Chairman, Animoca Brands.

Professor Leaua kicked off the discussion by describing the relationship between the metaverse and ordinary reality as two of the layers of the world in Greek mythology: Olympus, the layer of the Greek gods, and Earth, the layer of humans created by these gods. Each layer is governed by a different legal order.

Sophie Goossens followed up the discussion by stressing that traditionally, ownership has been understood as a right against the State. This means that what can be owned or not owned is up to the discretion of elected or appointed legislators. As of today, digital data is considered by most legal systems as free-flowing information that is not susceptible of being appropriated, which explains why the idea of creating public and non-falsifiable certificates associated with digital data has emerged: the Non Fungible Tokens (NFTs). These tokens —or blockchain certificates— give rise to novel concepts of ownership which disrupt the traditional categories of Intellectual Property (IP) rights as we currently know them.

Yat Siu mentioned that due to the traceable nature of blockchain, it is quite easy to spot any irregularities such as theft. Recovering those stolen pieces is, however, not straightforward, as one needs to form a consensus in blockchain to make any change.

Left to right: Elizabeth Chan, Sophie Goosens, Crenguta Leaua, Yat Siu

Left to right: Sophie Goosens, Crenguta Leaua

On the issue of the law or laws applicable to metaverse-related disputes, Sophie Goossens noted that generally, in IP disputes, the governing law is the law of the country where the harmful event took place. However, this approach may be difficult to apply in the virtual world, where the place of a harmful event can be hard to identify (e.g., it is not clear where the place of upload, server or access is).

Lizzie Chan then touched upon the jurisdictional and dispute resolution aspects of metaverse-related disputes. In most contracts, the question of who has jurisdiction is usually a matter of parties' choice and the same principle would apply in the metaverse. Lizzie explained that existing disputes

include IP claims involving NFTs and alleged cybersecurity breaches. It is possible that we will see a growing number of small-scale transnational disputes. Users are likely to expect dispute resolution processes to be speedy, efficient and affordable, and to achieve these goals may be willing to sacrifice high standards of due process. Lizzie considered at least three possible dispute resolution tools for resolving digital disputes:

i. 'traditional' dispute resolution in the courts or through arbitration,
ii. 'modified' international arbitration, where the rules of 'traditional' arbitration are modified for digital disputes, and
iii. decentralised justice systems, which combine blockchain, crowdsourcing and game theory in online dispute resolution.

Submitted by Elizabeth Chan, ArbitralWomen Board member, Co-Director, Young ArbitralWomen Practitioners; Registered Foreign Lawyer (England and Wales), Allen & Overy, Hong Kong, and İpek İnce, Gedik & Eraksoy Attorney Partnership, Istanbul, Turkey

Oral Advocacy in International Arbitration: The good, the bad and the in between, on 30 March 2022, in Paris, France

On 30 March 2022, the ICC Institute of World Business Law held an advanced level training titled 'Oral Advocacy in International Arbitration: The good, the bad and the in between'. This in-person seminar took place on the last day of the 6th ICC European Conference on International Arbitration. It comprised five sessions, each addressing oral advocacy at different stages of an arbitration proceeding. The lecturers examined pros and cons of certain advocacy styles and measures, gave advice on how to prepare for oral hearings, and addressed how to efficiently conduct cross-examination. Moderator **Teresa Giovannini**, Senior Counsel, Lalive, Geneva, Switzerland, asked many thought-provoking questions that reflected her impressive experience as arbitrator and counsel and led to a lively discussion with the audience.

One part of the all-day training was a presentation by **Guillaume Tattevin**, Partner, Archipel, Geneva, Switzerland, and **Anke Sessler**, Partner, Skadden, Arps, Slate, Meagher & Flom, Frankfurt, Germany, on the topic 'Oral advocacy, party autonomy and the determination of the facts of the dispute: the opening statement at the hearing'. The two speakers explained in detail the role of opening statements and post-hearing briefs. They also elaborated on what functions exhibits and visuals serve, both in oral advocacy and decision-making.

Guillaume Tattevin outlined good, bad and best practices regarding the opening statement and highlighted counsel and arbitrator perspectives. Regarding best practices, he referred to the short attention span of a goldfish to underline the enormous weight of the opening statement. Guillaume stressed that, since the opening statement is where the first impression is made, care should be taken to set clear goals and lay out a clear roadmap for the arbitral tribunal.

Anke Sessler elaborated on the desired relationship between opening statements and post-hearing briefs, as well as on the role of exhibits and visuals in arbitration proceedings. She made clear that the post-hearing brief should supplement and confirm the factual and legal allegations made in the opening statement. In Anke's opinion, the opening statement should explain, in summarised form, and with a focus on key aspects, why all elements of the legal basis of the claim(s) are met or not met. Anke stressed that the purpose of the opening statement is to enable the arbitral tribunal to understand the crucial aspects of the dispute and to prepare it for the taking of evidence. Conversely, according to Anke, the post-hearing brief reinforces the factual and legal allegations made in the opening statement by assessing the witnesses' and experts' oral testimony, highlighting the results of the evidentiary hearing and explaining to the arbitral tribunal how to assess the evidence and how the evidence fits into the overall fact pattern and the legal requirements of the claim(s).

Anke went on to elaborate on exhibits and visuals in oral advocacy and decision-making. In Anke's view, exhibits are the foundation on which the case is built. Visuals may be used, in particular, to portray damages or material defects, to illustrate similarities or differences, or to make allegations more catchy. Anke emphasised that visuals can be very helpful in oral advocacy, because they are processed more quickly by the brain and are easier to remember than text.

Submitted by Patricia Meinking, Research Assistant, Skadden, Arps, Slate, Meagher & Flom, Frankfurt, Germany

Strategies and Tools for Achieving Early and Speedy Dispute Resolution, on 28 March 2022, by Webinar

On 28 March 2022, the first day of the Paris Arbitration Week, **Athina Fouchard Papaefstratiou** (ArbitralWomen member, Arbitrator, AFP Arbitration) participated in a webinar discussing the means available to arbitrators and parties to achieve a swift resolution of disputes.

The webinar was co-organised by the French Chapter and the UAE Branch of the Chartered Institute of Arbitrators.

John Lowe (International arbitrator and mediator, Lowe Arbitration, Paris) discussed trends and best practices regarding the use of multi-tiered dispute resolution clauses and the use of mediation during arbitration proceedings.

Athina Fouchard Papaefstratiou focussed on expedited arbitration, a procedure nowadays available under many arbitration rules, as well as on early disposition of issues, the possibility of an arbitrator to rule on dispositive issues early in the proceedings. She discussed risks and best practices in that regard.

Sandeep Bhalothia (Head of Legal Affairs, Augmented Era, Bangladesh) then presented current developments regarding online dispute resolution and decentralised arbitration, focussing on the advantages but also on the limitations of these dispute resolution methods.

Lastly, **Lewis Johnston** (Director of Policy and External Affairs, Chartered Institute of Arbitration, UK), discussed the Business Arbitration Scheme, a fast-track arbitration procedure developed by the Chartered Institute of Arbitration for the resolution of small disputes.

Introductory and closing remarks were provided by **Alexandre Malan** (Belot Malan et Associés, Paris), **Iryna Akulenka** (Arbitrator, HKA, Dubai) and **Zeina Obeid** (Arbitrator, Obeid and Partners, Lebanon).

Samantha Lord Hill (Counsel, Freshfields, Dubai) moderated the discussion.

A recording of the webinar may be found here.

Submitted by Athina Fouchard Papaefstratiou, ArbitralWomen member, Arbitrator, AFP Arbitration, Paris, France

International arbitration: the mechanics of persuasion and how decisions are made, on 29 March 2022, hybrid event in Paris, France and by Webinar

This lively panel discussion, introduced by **Thomas Kendra**, Partner, and moderated by **Melissa Ordoñez**, Counsel and ArbitralWomen member, both in Hogan Lovells' Paris international arbitration team, featured distinguished scientist Dr. **Thomas Boraud**, Director of the *Institut des Maladies Neurodégénératives*, renowned scholar Dr. **Mihael Jeklic**, Director of Professional Skills at King's College, as well as two of the most in demand counsels and arbitrators, Dr. **Wolfgang Peter** and Professor Dr. **Maxi Scherer**, also an ArbitralWomen member. The debate was organised along three main themes as set out below. A recording of the conference can be found here.

The functioning of the human brain and its impact on decision-making

Dr. Boraud and Dr. Jeklic first insisted on the limits of human beings' rationality, describing the duality of our brain: within it coexist a fast automatic system, animated by unconscious processes, in addition to a slow deliberative system, animated by intentional and conscious processes. Dr. Jeklic reminded the audience that, even when there are high stakes at play, decision-making is not necessarily determined by material elements or evidence, but also that, as a lawyer, 'to persuade you have to be able to understand how cases are decided', a notion referred to as 'epistemic trust'.

Left to right: Thomas Boraud, Michael Jeklic, Wofgang Peter, Maxi Scherer and Melissa Ordoñez

The judicial and arbitral decision-making process

Dr. Boraud first highlighted the extent to which 'noise', in other words, information overload, inhibits decision making, an observation particularly relevant to arbitration cases and proceedings that are very long and prone to information overload. Based on his personal experience, Dr. Peter then opined that:

- Decision-making is quite incremental in international arbitration and arbitrators have often already formed their views prior to the post-hearing stage;
- While good arbitrators strive to work objectively, they may be influenced by the education they have received, their background, opinions on political economy and finance, and sometimes, feelings of social responsibility; and
- There are checks and balances throughout the decision-making process since arbitrators often work as part of a three-body panel, which leads to satisfactory awards.

Prof. Scherer then alluded to two important biases arbitrators might suffer in their decision-making process:

- Hindsight bias: the tendency, upon learning of the outcome of an event, to overestimate one's ability to have foreseen the outcome.
- Confirmation bias: searching and assessing information in a way that confirms one's view.

Effective persuasion strategies

Commenting on the notion of epistemic trust raised by Dr. Jeklic, Prof. Scherer emphasised the importance of ostensive cues, as well as the necessity to have the emotional intelligence to adapt to your audience, i.e., to not appear unnecessarily aggressive when such an attitude is unwarranted. She also emphasised the importance of organising one's arguments, and gave the audience her vision of a persuasive advocacy structure: start with your strongest arguments, end with the weakest, and save one strong point with which to conclude your arguments.

In conclusion, and generally speaking, successfully handling complex high-stakes arbitration cases requires a strong team, experience, and a solid knowledge of the case and the law. In difficult cases, however, the panel brought to light the fact that a skilful lawyer may be one who is able to not only navigate decision-makers' limited rationality and their cognitive shortcomings, but also one that can use them in his or her favour, as a tool for persuasion.

Submitted by Melissa Ordoñez, ArbitralWomen member, Counsel, Hogan Lovells, Paris, France

Quantifying damages in a time of disruption (scarcity of commodities, climate change/ ESG, geopolitics, blockchain and the metaverse), on 29 March 2022, in Paris, France

On 29 March 2022, HKA organised and hosted a conference entitled 'Quantifying damages in a time of disruption (scarcity of commodities, climate change/ ESG, geopolitics, blockchain and the metaverse)'. Expertly moderated by **Jana Lefranc** (Director, HKA), the panel, composed of **Anthony Charlton** (Partner, HKA), **Anastasia Davis Bondarenko** (ArbitralWomen member, Senior Vice President, Fortress Investment Group), **Karl Hennessee** (Senior Vice President and Head of Litigation, Investigations and Regulatory Affairs, Airbus), and **Noah Rubins** QC (Partner, Freshfields Bruckhaus Deringer), discussed the challenges in quantifying damages in unprecedented times of global disruption.

Jana Lefranc introduced the topic by setting out the various disruptions we have seen in recent years, including: The Covid-19 pandemic, the extended lockdowns, and the ensuing effects on

Left to right: Jana Lefranc, Anastasia Bondarenko, Karl Hennessee, Noah Rubins, Anthony Charlton

the economy (such as reduced demand, supply shortages, layoffs, delays in construction); climate protection creating demand for renewable energy, whilst reducing the popularity of traditional resources, such as coal; geopolitical events, including the war in Ukraine and the ensuing sanctions; and the rise in cryptocurrency. The panellists then engaged in a lively discussion on how these disruptive phenomena, as well as the volatile combination of these events arising in a relatively short time frame, affect the quantification, in international arbitration, of economic loss suffered by claimants.

The panel addressed the following points: Why disruption happens, the impact of Covid-19 on the operations of Airbus; how companies deal with supply shortages; how the volatility in commodities' prices impacts loss calculations in extractive industries; the use of hindsight in international arbitration when quantifying the economic harm suffered by a claimant; the impact of these various disruptions on the third-party funding industry; the rise of cryptocurrency, its use in arbitration proceedings, and questions arising with respect to quantifying damages; key questions raised in respect of damages quantification in disputes related to protection of the environment or ESG and the calculation of pre-award interest in times of disruption.

Submitted by Anastasia Davis Bondarenko, ArbitralWomen member, Senior Vice President, Fortress Investment Group, Paris, France

Reform of the English Arbitration Act: lessons from France and beyond, on 29 March 2022, hybrid event in Paris, France and by Webinar

Top to bottom, left to right: Nathan Tamblyn, Paula Hodges, Sylvain Bollée, Thierry Tomasi, Renato Stephan Grion, Emily Fox

On 29 March 2022, Herbert Smith Freehills ('HSF') hosted a hybrid panel event on the 'Reform of the English Arbitration Act: lessons from France and beyond' as part of the 2022 edition of the Paris Arbitration Week. In light of the Law Commission for England and Wales's current review of the English Arbitration Act 1996 (the 'Act'), the aim of the event was to consider key issues of proposed reform from an English, French and Brazilian comparative perspective.

The panel was composed of Professor **Sylvain Bollée** (Université Paris 1 Panthéon Sorbonne, France), Dr. **Nathan Tamblyn** (Law Commission), **Renato Stephan Grion** (Partner, Pinheiro Neto Advogados, Brazil),

and **Paula Hodges** QC (Partner, HSF).

After a brief introduction from moderators **Thierry Tomasi** (Partner, HSF) and **Emily Fox** (Of Counsel, HSF), Dr. Tamblyn provided some background on the Law Commission's review of the Act, focussing on the Commission's role, its ongoing consultation process with key stakeholders, and its likely review timeline.

The first topic of discussion was the scope of the English courts' powers to intervene in support of arbitral proceedings, specifically with regard to interim relief, prior to the constitution of the tribunal and the rise of 'emergency arbitration' procedures. The speakers addressed the interplay between the courts' jurisdiction under section 44 of the Act and the availability of emergency arbitration, as well as the status and enforceability of decisions rendered by emergency arbitrators. Paula Hodges QC highlighted some of the uncertainty regarding these issues arising from the Act and the High Court's controversial decision in *Gerald Metals*. Dr. Tamblyn also discussed some of the practical considerations in deciding whether the Act should be updated to address emergency arbitration. Renato Grion provided insight from Brazil's successful use of 'arbitral letters' to promote dialogue between courts and tribunals.

The panel then moved on to the issue of the appropriate standard of review for challenges to tribunals' jurisdictional rulings, namely whether such a review should involve a complete rehearing of the issues previously decided by the tribunal. Noting that this was currently the case in all the jurisdictions represented on the panel, the speakers debated the appropriate degree of deference owed to tribunals in this context, considering issues such as the ability for parties to introduce new evidence and new arguments which were not previously put before the tribunal.

The final subject of discussion was the unique position under the Act of permitting appeals of arbitral awards on points of law. Paula Hodges QC and Dr. Tamblyn highlighted the particularity of the common law's precedent system and the support that remains for a residual right of appeal for important matters of law. While Professor Bollée and Renato Grion confirmed that there is no such procedure in their respective jurisdictions, Professor Bollée noted that a limited exception may lie in the ability for French courts to conduct a full review of the conformity of an arbitral award with international public policy, citing the recent ruling of the Court of Cassation in *Belokon*.

Submitted by Paula Hodges QC, ArbitralWomen member, Head of Global Arbitration Practice at Herbert Smith Freehills and President of the LCIA Court, London, UK

The impact of Russian sanctions on international commercial arbitration: from arbitrability to enforcement, on 29 March 2022, hybrid event in Paris, France, and by Webinar

As part of the 2022 Paris Arbitration Week, Jeantet organised a hybrid conference on 'The impact of Russian sanctions on international commercial arbitration: from arbitrability to enforcement'. The panel, moderated by Dr. **Ioana Knoll-Tudor** (Partner, Jeantet, Paris). Dr. **Crina Baltag** (Associate Professor, Stockholm University) addressed the origins of economic sanctions (the EU, for instance, has been imposing economic sanctions on Russia since 2014) and gave an overview of their effect on international arbitration. The issue of arbitrability of a dispute involving economic sanctions emerged in 1994 when the Genoa Court of Appeal concluded that national courts (and not arbitrators) had jurisdiction in such cases. Conversely, in recent years, national courts have constantly confirmed that arbitral tribunals are competent to decide on the arbitrability of the matter.

David Lasfargue (Partner, Jeantet) discussed the current sanctions and counter sanctions. In 2022, the EU issued four packages of sanctions against Russia, who, in turn, developed countermeasures, promptly releasing a list of 'unfriendly States'. Among the most notable countermeasures is presidential Decree of 28 February

2022, which provides that residents are obliged to sell 80% of the foreign currency received from non-residents. Also of note is Presidential Decree dated 9 March 2022, according to which, under certain conditions, Russian courts may transfer to a public institution the management of companies of over 100 employees where shareholders from 'unfriendly States' own over 25% of the shares.

Niamh Leinwather (Secretary General, VIAC) focussed on how arbitral institutions, notably VIAC, deal with the issue of economic sanctions. VIAC has a system of checking different website and databases and it requires the parties to provide detailed information on the identity of the parties. Checks are conducted at all relevant stages of the proceedings, particularly at stages which involve money transfers.

Evgeniya Rubinina (Partner, Enyo Law) presented Russia's 'anti-sanctions' reform of its Code of Procedure in commercial matters. Russia has introduced Article 248 to said Code, in order to provide sanctioned parties with access to justice in Russia, before or after the commencement of a dispute before a foreign court or an arbitral tribunal seated outside of Russia, even in those cases where there exists a choice-of-forum clause in favour of arbitration or of courts outside Russia.

Jacques-Alexandre Genet (Partner, Archipel) discussed the impact of sanctions on the enforcement of arbitral awards in the context of international arbitration. He first highlighted the difference between freezing and seizure of assets. Economic sanctions may have two major consequences at the stage of enforcement of arbitral awards:

1. Award debtors may be precluded from making any payments to sanctioned award creditors;
2. Sanctioned award debtors may be precluded from paying with their frozen funds.

In a recent ruling (*Bank Sepah v. Overseas Financial Limited*), the ECJ considered that a private creditor looking to obtain an interim measure on frozen funds must first refer to the national competent authorities. This, in practice, prevents any interim measure being performed on frozen funds, since this authorisation will be very difficult to obtain. This makes it difficult to enforce arbitral awards against targeted or listed Russian entities, as it is likely not possible to enforce an award on frozen funds.

Submitted by Dr. Ioana Knoll-Tudor, Partner, Jeantet, Paris, France

Stranded Assets and Disputes, on 29 March 2022, hybrid event in Paris, France, and by Webinar

Saskia Tates addressing the audience

On Tuesday 29 March 2022, Shearman & Sterling and FTI Consulting co-hosted a conference on the theme of 'Stranded Assets and Disputes'.

The ever-increasing urgency to achieve a global energy transition and comply with net-zero commitments results in the stranding of some existing energy assets and therefore renders related disputes inevitable, raising critical, practical and policy questions for all stakeholders, from States to energy industry actors and beyond.

Saskia Tates (Director of Legal, Neptune Energy), **Emmanuel Jacomy** (Partner, Shearman & Sterling), **Matthias Cazier-Darmois** (Senior Managing Director, FTI Consulting) and **Emmanuel Grand** (Senior Managing Director, FTI Consulting) explored these dynamics and the future landscape of disputes involving stranded energy assets, including the application of standards of investment protection, some issues relevant to valuation and damages, and the potential for policies and solutions to allocate the risks and costs of the energy transition in the years to come.

Submitted by Juliette Fortin, ArbitralWomen Board member, Senior Managing Director at FTI Consulting, Paris, France

Disputes in the Caribbean Energy Sector: Past, Present and Future, on 30 March 2022, in Paris, France

Left to right: Conway Blake, Ayse Lowe, Hana Doumal, Elif Duranay and Shan Greer (Calvin Hamilton and Dany Khayat joined the session remotely and are absent from the photo)

On 30 March 2022, as part of Paris Arbitration Week 2022, the BVI International Arbitration Centre (BVI IAC) and the Energy Disputes Arbitration Center (EDAC), organised a conference on disputes in the Caribbean energy sector moderated by **Hana Doumal** (Registrar, BVI IAC) and **Elif Duranay** (Vice Secretary General, EDAC), with the following speakers: ArbitralWomen member **Shan Greer** (Independent arbitrator and mediator, Arbitra International), **Calvin Hamilton** (Independent arbitrator, Arbitra International), **Dany Khayat** (Partner, Mayer Brown), **Conway Blake** (International counsel, Debevoise & Plimpton) and ArbitralWomen member **Ayse Lowe** (Global head of origination, Bench Walk Advisors LLC).

This report uses extracts from the Biberon PAW 2022 published by Estelle Boucly and Jannis Tiede (Paris Very Young Arbitration Practitioners).

The panel was first asked to define the Caribbean region and the energy resources that exist there. Calvin Hamilton described the Caribbean region, including its historical and political background, as well as its energy resources. Shan Greer then explained the regulatory approaches of the Caribbean countries considering the main energy resources of the region, and mentioned the Caribbean Community (CARICOM), which created a regional policy by fixing renewable energy objectives that are to be reached by 2030. Among the most ambitious States is Barbados, which is aiming for 100% renewable energy by 2030.

The panel was then asked whether the Caribbean had incentive mechanisms for investors to support the transition to renewable energy. Conway Blake noted that it was essential for the survival of the Caribbean to attract foreign investors and to assure the energy transition, in particular with regard to climate change. Dany Khayat highlighted the importance of reliability when it comes to creating government-funded incentives. Drawing examples from the European Union, he explained how States need to be mindful of taking away those incentives at a later date, since this would give rise to 'legitimate expectation' claims by the investors who have been acting in reliance on the incentives.

Examining the disputes that arose in the Caribbean energy sector, especially in the last 20 years, Calvin Hamilton gave an overview of a number of purchase share agreement disputes, a notable gas arbitration case and a failed venture between a New York company's subsidiary and the Petroleum Company of Trinidad and Tobago Ltd. Conway Blake and Shan Greer then described the balancing dynamic between governments and investors, and the tension between them as the regulatory regime is no longer up to date and is too restrictive for today's times.

As for the future of energy disputes in the Caribbean, Ayse Lowe noted that most of the disputes until now have been construction disputes. She is convinced that there will be a growing number of them in the years to come, as renewable energy is such a growing topic. She added that an issue that needs to be addressed is corruption, as it deters potential litigation funders. Shan Greer also predicted a rise in disputes mainly in Guyana, Barbados and Jamaica. More generally, Calvin Hamilton sees the future of conflicts in the gas and petrol sector, delays in construction contracts and service contracts.

Finally, the speakers agreed that Caribbean States need to afford greater economic powers to the private energy sector, as the future lies in the energy transition.

Submitted by Hana Doumal, ArbitralWomen member, Registrar at the BVI International Arbitration Centre, British Virgin Islands

Arbitration in Western and Northern Africa: Institutional Perspectives and Legal Developments, on 30 March 2022, by Webinar

Top to bottom, left to right: Ismail Selim, Guillaume Areou, Diamana Diawara, Oluwatosin Lewis, Athina Fouchard Papaefstratiou, Clément Fourchard and Boli Djibo Bintou

Arbitration in Africa was on the spotlight during the 2022 edition of Paris Arbitration Week!

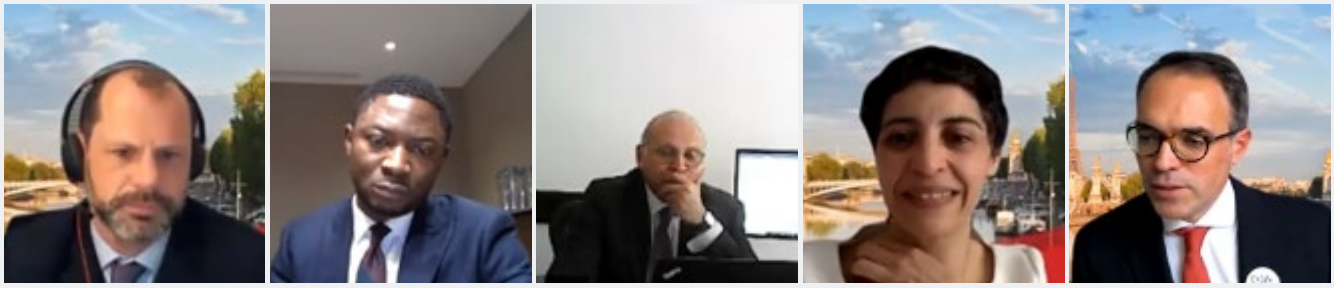
On 30 March 2022, AfricArb and Reed Smith co-organised a webinar titled 'Arbitration in Western and Northern Africa: Institutional Perspectives and Legal Developments', in which participated ArbitralWomen member **Athina Fouchard Papaefstratiou** (ArbitralWomen member, arbitrator, AFP Arbitration) and ArbitralWomen Board member Dr. **Affef Ben Mansour** (independent counsel and arbitrator).

The webinar was composed of two panels.

The first panel focussed on developments regarding arbitration practice. Representatives of arbitration institutions active in Western and Northern Africa, **Diamana Diawara** (Director, Arbitration and ADR For Africa, ICC), **Oluwatosin Lewis** (Executive Secretary, Lagos Court of Arbitration), Dr. **Ismail Selim** (Director, CRCICA), **Boli Djibo Bintou** (Secretary, CAMC-O) discussed trends in arbitration proceedings in the last couple of years and Athina Fouchard Papaefstratiou moderated. The panel focussed, amongst other subjects, on the quest for speedier resolution of disputes and the tools that are available to arbitrators and parties for that purpose, on the wider acceptance of mediation, the statistical trend towards more settlements during arbitration proceedings, and the increasingly frequent remote and hybrid proceedings.

The second panel focussed on recent developments regarding substantive points of law in Western and Northern Africa. Dr Affef Ben Mansour, **Clément Fouchard** (Partner, Reed Smith), Prof. **Mohamed Sameh Amr** (Chair of International Law, Cairo University), and **Tolu Obamuroh** (Associate, White & Case) discussed, with Dr. **Guillaume Areou** (Associate, Reed Smith) as moderator, recent points of interest in the case law of the OHADA Common Court of Justice and Arbitration and of Egyptian, Nigerian and Tunisian courts. They notably focussed on recent developments regarding the principle of competence-competence, arbitrability, the duty of independence and impartiality, as well as the enforcement of awards.

Submitted by Athina Fouchard Papaefstratiou, ArbitralWomen member, arbitrator, AFP Arbitration, Paris, France



Left to right: Guillaume Arrow, Tolu Obamuroh, Mohamed Samedi Amr, Affef Ben Mansour and Clément Fouchard.

Energy Transition in Latin America, on 30 March 2022, in Paris, France

Left to right: Alejandra Bernal-Guzmán, Ana Serra e Moura, Flavio Spaccaquerche Barbosa, Catalina Echeverri Gallego, Eduardo Silva Romero

During the 2022 Paris Arbitration Week, Dechert (Paris) LLP hosted a panel on 'Energy Transition and Arbitration in Latin America' at the *Maison de l'Amerique Latine*, moderated by **Eduardo Silva Romero**, co-Chair of Dechert's International Arbitration global practice and partner at Dechert's Paris office.

Alejandra Bernal-Guzmán, Programme Officer for Latin America at the International Energy Agency in Paris, offered a snapshot of the energy sector in Latin America at present. She explained that while the Latin American energy sector is still heavily reliant on oil, electricity is mostly sourced from hydropower, which positions the sector as one of the less-carbon intensive ones in the world, but also exposes it to high climate vulnerability. She also highlighted the region's potential to produce low-carbon hydrogen, as well as some of the minerals that are crucial for the deployment of clean energy, such as lithium and copper.

Ana Serra e Moura, Deputy Secretary General of the ICC International Court of Arbitration, presented the institutional perspective and provided valuable statistics about disputes concerning the energy sector, showing that, in 2020, the ICC Court registered the highest number of energy-related cases since 2008, a significant portion of which related to Latin America. She also spoke about three categories of climate change disputes that we might see in the future:

i. contracts entered into to implement the energy transition, mitigation, or adaptation to climate change commitments,
ii. contracts indirectly related to the energy transition, and
iii. agreements in which parties voluntarily agree to arbitrate a climate change dispute.

Flavio Spaccaquerche Barbosa, Partner at Mattos Filho Advogados in Brazil, highlighted Brazil's experience in the energy transition as one of the largest renewable energy markets in the region and the potential landscape for disputes there. He focussed on the differences between the oil and gas sector and the renewable energy sector from a regulatory perspective, as well as from a disputes perspective, highlighting the current absence of abundant case law in the renewable energy sector (as opposed to the prolific *lex petrolea*).

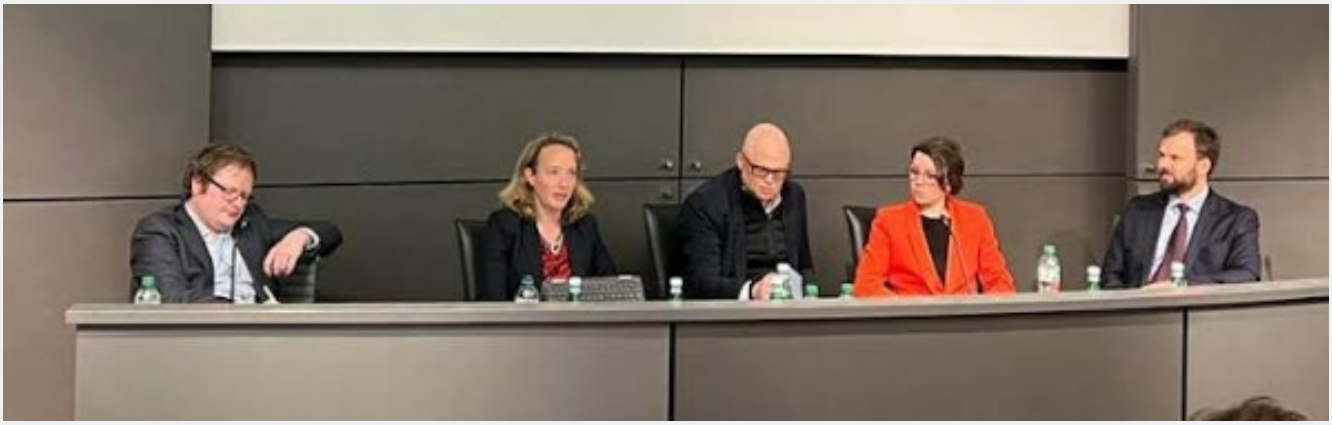
Catalina Echeverri Gallego, senior associate at Dechert (Paris) LLP, posited that we might start to see arbitrations in Latin America arising out of contractual commitments to measure, report, manage and/or reduce total greenhouse gas emissions. She argued that companies operating in Latin America will increasingly undertake and impose such contractual commitments, even if Latin American regulations do not require them to do so, in cases where:

i. regulations in force at the company's country of origin requires the company to take climate-related action,
ii. the company is publicly listed and has specific climate-related disclosure obligations, and/or
iii. the company needs to secure financing and the financial institution requires the company to take climate-related action.

The diversity of perspectives and approaches to the topic fostered interesting discussion with the audience.

Submitted by Catalina Echeverri Gallego, ArbitralWomen member, senior associate at Dechert (Paris) LLP, Paris, France

Assessing Damages in a Stagflation World, on 30 March 2022, In Paris, France



Left to right: David Hunt, Gisèle Stephens-Chu, Jeffery Commission, Marion Gady and Tomas Vail

During Paris Arbitration Week, Boies Schiller Flexner hosted an in-person event at FTI Consulting's offices in Paris, exploring the possible implications of stagflation for disputes and valuations. Speakers included ArbitralWomen members **Gisèle Stephens-Chu** (Stephens Chu Dispute Resolution) and **Marion Gady** (FTI Consulting), as well as **David Hunt** (Boies Schiller Flexner) and **Tomas Vail** (Vail Dispute Resolution), with **Jeffery Commission** (Buford Capital) moderating the discussion.

By way of introduction, Jeffery Commission first recalled analysts' recent warnings of stagflation arising from the Ukraine-Russia crisis occurring at a time when the world economy is still recovering from the pandemic, providing an overview of the causes and symptoms of stagflation. Marion Gady then discussed these in more detail, addressing key economic themes, such as the double supply shock, rising inflation and the response from central banks and governments. She explained that the main tool to control inflation consists in increasing interest rates, but this could lead to more inflation if unemployment and salaries start rising, requiring central banks to act with care and to be reactive to the evolution of macroeconomic fundamentals. Gisèle Stephens-Chu observed that longer term responses from governments included the reshoring of local production and increased protectionism, as is already evident from policy-making in Europe and Africa. This could lead to more inflation, as local production would come at a higher cost, compared to what we have known in the past 40 years or so. Focussing on the Russia-Ukraine crisis, Tomas Vail explained recent measures taken by Russia and how these would give rise to claims and disputes. Among other things, he highlighted Russia's new decision to be paid for its gas in Russian rouble, to avoid a strong devaluation of its currency that would inevitably lead to a significant increase of the cost of imported goods, i.e. to high levels of inflation.

Turning to the impact of potential stagflation on assessing damages, David Hunt discussed how the legal framework for valuing damages may account for inflation and economic uncertainty, for instance, under English law, through the use of hindsight. Gisèle Stephens-Chu noted that, in civil law systems, damages were in any event assessed as of the date of the award, but this did not provide a complete answer with respect to future economic harm, which had to be proven with reasonable certainty. Marion Gady offered some insights into the tools used by economists to build certainty into damages assessments in the present climate, including through the consideration of specific inflation forecasts or the adjustment of the discount rate. Panellists also discussed how inflation may affect a project's overall viability, and contractual performance, for example through the increase of operating costs not compensated by increased revenues.

Panellists then discussed the risk of sovereign default by Russia and other countries (notably in Africa), as well as currency controls and restrictions on free movement of funds, that may generate contractual and investment treaty claims.

Finally, the panel concluded with a discussion on awards of interest, noting the importance of considering the different functions of interest and adopting an economic approach to selecting an interest rate that appropriately factors in the impact of inflation (e.g., a floating interest rate that would follow inflation could be useful in uncertain times, especially at the beginning of proceedings when the issuance of an award is not expected before several years). Marion Gady also highlighted the need to choose carefully the currency of the claim, as inflation can bring significant exchange rates movements.

Submitted by Gisèle Stephens-Chu, Stephens Chu Dispute Resolution, and Marion Gady, FTI Consulting, Paris, France

First-ever Virtual Reality Arbitration Conference, on 30 March 2022, by Avatar/ Webinar

Avatars in conference

Paris Arbitration Week 2022 hosted the first-ever arbitration conference in the metaverse.

Introduction to the Metaverse, Web 3.0 and their Key Features

Lizzie Chan (ArbitralWomen Board member) introduced the metaverse as a persistent digital world in which we each have a presence. It is at the heart of web 3.0, the third generation of the Internet, defined by, among other factors, decentralisation, i.e., the idea that the Internet is owned by many and no one actor can own or control it. Some of the key features of the metaverse include: users participating as avatars, the use of immersive technologies such as virtual reality; the use of digital assets; the existence of centralised and decentralised metaverse platforms; and the ability to enjoy a wide range of experiences.

Disputes that Can Arise in the Metaverse

Juliette Asso-Richard (ArbitralWomen member) then presented examples of disputes that can arise in the metaverse.Disputes between users and metaverse platforms will inevitably include disputes concerning the violation of users' personal data. They may also include disputes concerning virtual real estate, given the hundreds of millions at stake. Some actions of metaverse platforms could indeed potentially adversely affect the value of virtual land acquired by some users (e.g. change of an exclusive parcel's surroundings, increase in the number of plots of land available for sale or even a closure of the platform's servers), leading to disputes.

As for disputes amongst users, in addition to the usual crime and tort disputes replicated from the physical world (e.g., theft of a digital asset or sexual harassment between avatars), one will also see disputes regarding transactions between users. This is because in the metaverse, users can, *without any control of the platform*:

i. offer services to other users (e.g., gaming experiences, concerts, life or sports coaching sessions);
ii. create digital assets (e.g., wearable items, accessories, art) and sell them to other users; and
iii. rent or resell parcels of virtual land to other users.

Status Quo if Dispute Resolution in the Metaverse

Emily Hay (ArbitralWomen member) followed up with a summary of how matters stand in relation to dispute resolution in the metaverse. For disputes between a user and a metaverse platform, the starting point is to check the terms of use that the user agreed to.

As for disputes between two users in the metaverse, some challenges include:

i. determination of applicable law;
ii. how to determine the parties to the dispute, when the avatar of the counterparty is not identifiable;
iii. determining the jurisdiction of a decision-maker; and
iv. enforcement of outcomes, especially in relation to digital assets.

Decentralised Dispute Resolution

Ekaterina Oger Grivnova then presented one of the alternatives to traditional dispute resolution – decentralised justice, which is an online dispute resolution service supported by blockchain technology. Key innovations include three things:

i. randomly-selected jurors;
ii. on-chain enforcement; and
iii. anonymity of users.

Submitted by Elizabeth Chan (ArbitralWomen Board member, YAWP – Young ArbitralWomen Practitioners Co-Director); Juliette Asso-Richard (ArbitralWomen member, LALIVE); Ekaterina Oger Grivnova (Allen & Overy); Emily Hay (ArbitralWomen member, Hanotiau & van den Berg) & Yasmin Mohammad (ArbitralWomen member, Fortress Investment Group)

Review of arbitral awards by the International Chamber of the Paris Court of Appeal, on 30 March 2022, in Paris, France

Various speakers and attendees at the event

A conference on the review of arbitral awards by the International Chamber of the Paris Court of Appeal took place on 30 March 2022, as part of the 2022 Paris Arbitration Week. The event was organised by Paris Place d'Arbitrage, the not-for-profit association promoting Paris as the world's leading site for international arbitration.

Gaëlle Le Quillec, Partner, Eversheds, Paris, France and President of Paris Place d'Arbitrage, opened the conference. The conference began with a keynote speech by **François Ancel**, President of the International Chamber of the Paris Court of Appeal ('International Chamber'). Mr. Ancel addressed the role of the International Chamber—which was created in 2018 and hears all proceedings for setting aside arbitral awards rendered in international arbitrations seated in Paris— and provided an overview of its approach to the review of arbitral awards and the challenges that the arbitration community and the International Chamber will face in the future.

Nathalie Makowski, Partner, OPlus, Paris, France, acted as moderator for the three panels that followed.

In the first panel, **Elizabeth Oger-Gross**, Partner, White & Case, Paris, France, and **Elena Sevila Sánchez**, Director, Andersen Tax & Legal, Madrid, Spain, spoke on the International Chamber's review of the arbitral tribunal's jurisdiction. They first discussed two 2021 decisions in matters where jurisdiction was based on a bilateral investment treaty. They commented that those decisions touched upon the material and legal autonomy of the arbitration clause, the relationship between the legality of the investment and the arbitral tribunal's jurisdiction, and the assessment of allegations of corruption as a possible ground for reversal of the arbitral tribunal's jurisdiction. They then addressed the issue of extension of the arbitration clause to non-signatory parties and noted that the decisions of the International Chamber rendered on this issue aligned with previous case law of the Paris Court of Appeal. They noted that the International Chamber seeks out all elements relevant to establish acceptance and/or knowledge of the arbitration clause by the non-signatory, proceeding by way of presumptions. This may include evidence of the parties' involvement in the performance of the contract. In light of these decisions, they concluded that the level of review conducted by the International Chamber does not depend on the basis of the tribunal's jurisdiction: whether it is a bilateral investment treaty or an arbitration clause in a contract, the International Chamber analyses all legal and factual circumstances in order to assess the scope of the arbitration agreement.

In the second panel, Professor **Thomas Clay**, Partner, Clay Arbitration, Paris, France and **Philippe Pinsolle**, Partner, Quinn Emanuel Urquhart & Sullivan, Geneva, Switzerland, considered the International Chamber's review of arbitrators' independence. They commented that the different grounds invoked in order to annul an award on the basis of an arbitrator's lack of independence could be a source of legal uncertainty. They noted that the International Chamber's review takes into account temporal aspects, proximity aspects, and the specific circumstances of the case. They then addressed some of the challenges of this review, in particular the extent and definition of notorious facts and the so-called 'duty of curiosity'.

In the final panel, **Alexis Mourre**, Partner, MGC Partners, Paris, France and **Ina Popova**, Partner, Debevoise & Plimpton, New York and Paris, spoke about the International Chamber's review of awards' conformity with international public policy. Mr. Mourre noted that the standard of the review may vary and discussed the recent decision of the Court of Cassation in Belokon. Ms. Popova, in turn, addressed the case law of the International Chamber on annulment for violation of international sanctions, referring to four recent decisions. She noted that this argument has so far been unsuccessful on the merits, but may become increasingly frequent in the future, in light of recent sanctions involving Russia. Recent decisions show that the International Chamber takes into account the purpose of the sanctions in question, whether they are unilateral or whether they reflect an international consensus, the attitude of the French authorities to foreign sanctions, and the temporal aspect (compliance with international public policy is assessed at the time of the judicial ruling, not at the date the award was rendered, nor at the time of the underlying facts, or in light of hypothetical future facts).

Carine Dupeyron, Partner, Darrois Villey Maillot Brochier, Paris, France, summed up the key takeaways from all three panels and noted that questions still arise as to the nature and standard of review conducted by the International Chamber, especially with regards to the underlying merits. **Julie Couturier**, the President of the Paris Bar, gave concluding remarks, noting the role that the international arbitration community plays in contributing to the prestige and influence of the Paris Bar.

Submitted by Ina Popova, ArbitralWomen member, Partner, Debevoise & Plimpton, New York, USA and Paris, France, and Elizabeth Oger-Gross, ArbitralWomen member, Partner, White & Case, Paris, France

The role of climate change in post-M&A arbitration, on 30 March 2022, by Webinar

During Paris Arbitration Week 2022, Fieldfisher hosted an enlightening discussion on the role and impact of climate change in M&A transactions and post-M&A disputes. The panel included **Annette Magnusson** (Climate Change Counsel), **Patrick Baeten** (ENGIE), **Eliseo Castineira** (Castineira Law), **Marily Paralika** (Fieldfisher Paris) and **Maxime Berlingin** (Fieldfisher Brussels).

Since the beginning of the 21st century, the number of disputes involving a climate change element has snowballed. What began as a few isolated cases in the US, is now a confirmed legal trend, numbering over 2,000 cases filed in more than 40 countries to date. Pressure on companies and their boards to align business activities with the targets laid down in the 2016 Paris Agreement is increasing and legislation is starting to set clear rules on what companies are responsible for in the course of their business activities. In this context, regulatory authorities as well as shareholders are bringing claims regarding mitigation of climate risk or the veracity of corporate climate change and sustainability commitments.

Marily Paralika

Climate change in post-M&A disputes

Climate change-related disputes look set to fall into two categories: direct, where climate change is at the core of the issue in dispute, for example in transactions involving renewable energy projects; and indirect, where M&A transactions give rise to claims that, for example, a company has failed to observe its obligations under the Paris Agreement. The indirect category is likely to be where we see the majority of international commercial arbitrations.

The growth of climate change litigation is already having a direct effect on the M&A process. As well as affecting the choice and price of target, due diligence is beginning to probe an organisation's understanding of climate risk, as well as considering the climate impact of the proposed transaction. This push for greater climate change-related disclosure will undoubtedly be reflected in the terms of M&A contracts.

How arbitration can help

Arbitration offers – in principle – a uniform international forum for climate change-related disputes, as well as the ability to use party-appointed experts who can help the tribunal focus on and define the relevant climate issues.

Arbitration also allows for efficient resolution of urgent disputes, which

may be necessary to prevent irreversible consequences of climate-damaging actions.

Arbitral proceedings are also equipped to cater to the multi-party aspects of renewable energy projects, which typically involve a variety of agreements.

However, arbitration will have to adapt to accommodate this new breed of disputes and ensure this avenue of dispute resolution remains attractive to commercial parties. For instance, disputes that involve climate change-related elements arguably have a public interest dimension and may require more transparency than arbitration has typically catered for.

For ICC arbitrations, the publication of awards has been possible since 2019. However, if parties are uncomfortable with awards being published in full, details can be redacted. An acceptable compromise will need to be found to avoid steering companies away from arbitration. The publication of awards could also lead to the creation of model classes for the resolution of climate change-related disputes.

Perhaps most importantly, arbitrators will be expected to fully understand climate change issues and be aware of the regulatory, judicial, and public policy environment of the contract being disputed.

Click here to view a recording of the panel.

Submitted by Marily Paralika, ArbitralWomen member, Partner, International Arbitration, Fieldfisher Paris, France

GAR Live: Construction Disputes 2022, 2 Fast 2 Furious (mock arbitration), on 31 March 2022, in Paris, France

On 31 March 2022, in the last session of the day at GAR Live Construction conference during Paris Arbitration Week, Arbitral Women member **Laura Abrahamson**, FCIArb, participated in '2 Fast 2 Furious: Arbitration in an hour'. Building on the fact that the U.S. Supreme Court only allows parties 30 minutes each to present their case, a panel of counsel, experts and arbitrators attempted the same in a mock construction arbitration. After hearing the presentations, the mock tribunal, counsel and attendees discussed whether a slightly extended version could in the future be an alternative to traditional lengthy construction arbitrations.

Jane Davies Evans, Barrister at 3 Verulam Buildings in London, moderated the exercise. Former Freshfields partner and Independent Arbitrator **Brian King**, from London and New York, chaired the mock tribunal for the exercise, with **Marion Smith** QC of 39 Essex Chambers in London and Laura Abrahamson, FCIArb with JAMS in Los Angeles acting as his co-arbitrators. **Alejandro López Ortiz**, who leads the Latin American Practice at Mayer Brown in Paris, **Sunil Mawkin** with Allen & Overy in London, **Matei Purice**, Continental Europe Head of Global Projects Disputes at Freshfields in Paris and **Sharon Vogel**, partner at Singleton, Urquhart, Reynolds Vogel LLP in Toronto, ably advocated for the parties.

The educational and entertaining hour argument explored claims brought by a construction company engaged by a supercontractor to execute fit out works for a delayed airport construction project, including a jurisdictional challenge, and disputes surrounding notice of design changes, Covid-19 effects, loss of productivity and whether the contract was wrongfully terminated, under a fictional mixture of French and Singaporean law.

Submitted by Laura Abrahamson, ArbitralWomen member, FCIArb, Arbitrator & Mediator, JAMS, Los Angeles, USA

The ERA Pledge at the Paris Arbitration Week, on 31 March 2022, in Paris, France

On 31 March 2022, French arbitra-tion and litigation boutique firm, Teynier Pic, in partnership with the Equal Representation in Arbitration (ERA) Pledge, hosted an interactive networking breakfast during Paris Arbitration Week. The event brought together lawyers, academics, arbitrators, institution and legal tech members, third-party funders, experts, and in-house counsel to discuss and reflect on the concrete impact of the ERA Pledge, which calls for the appointment of female arbitrators on an equal opportunity basis.

Sara Nadeau-Seguin, Teynier Pic's newest partner and member of the ERA Pledge Young Practitioner Committee, opened the event with a few introductory words on the arbitration community's responsibility to actively pursue diversity in arbitration and the importance of the ERA Pledge in this regard. She invited attendees to discuss diversity in arbitration with colleagues exercising a legal profession different from their own. She also thanked both **Caroline Croft**, associate at Squire Patton Boggs and co-chair of the ERA Pledge's Young Practitioner Committee, and **Gisèle Stephens-Chu**, founder of Stephens-Chu Dispute Resolution and member of the ERA Pledge's Steering Committee, for their help in organising the event.

Gisele Stephens-Chu then took the floor. She highlighted the lack of diversity when it comes to arbitral appointments and stressed the crucial role played by the parties to an arbitration in promoting diversity by appointing diverse arbitrators. Ms. Stephens-Chu also encouraged attendees to deploy the ERA Female Arbitrator Search Tool, hosted on the International Council for Commercial Arbitration's website, which helps parties identify female arbitrator candidates.

Eric O'Donnell, Head of Legal

Gisèle Stephens-Chu addressing the attendees

Eric O'Donnell giving his presentation

Laurence Kiffer, Alison Pearsall and other attendees

Operations at TotalEnergies, was then invited to share his experience implementing diversity and inclusion policies at one of the world's largest public companies. He candidly described TotalEnergies' ongoing efforts to ensure a more diverse and inclusive legal profession in international arbitration, stressing that acknowledging the existence of a problem is often the first step towards finding the solution. He listed a number of initiatives deployed by TotalEnergies to ensure that women (and minorities) are promoted to positions of management worldwide. He remarked that even in law firms, where female associates may outnumber male associates, the number of women decreases as one goes up the ladder. Mr. O'Donnell further shared a few of the ways in which TotalEnergies seeks to ensure that it only works with law firms where working conditions allow all associates to rise to leadership positions. This may include imposing a cap on the number of hours a firm may bill per day, per associate, at 8 hours, which not only allows time for associates' personal life / family, but also preserves their mental and physical health and, indirectly, the quality of the work they produce. He noted that TotalEnergies also aims to implement diversity and inclusion policies at an early stage, from the recruitment phase, and also through its partnerships with universities, such as Paris 8 University and Paris Panthéon-Assas University.

The speakers concluded on a positive note and emphasised that significant strides have already been made in the right direction, through initiatives such as the ERA Pledge. Many of the attendees at Teynier Pic's event also signed the ERA Pledge, further strengthening their commitment to a fairer representation of female arbitrators on tribunals.

Submitted by Sara Nadeau-Seguin, Partner, Teynier Pic, Paris, France

Investment Treaty Arbitration: Catch-up on Major Recent Developments in National Case Law in France, England, Sweden and Belgium, on 31 March 2022, by Webinar

Left to right: Isabelle Michou, Robin Oldenstam, Mathias Audit, Jagpreet Sandhu, Erica Stein

On 31 March 2022, in the context of the Paris Arbitration Week, the Swedish Arbitration Association, Quinn Emanuel and Sorbonne Arbitrage hosted a webinar titled 'Investment Treaty Arbitration: Catch-up on Major Recent Developments in National Case Law in France, England, Sweden and Belgium'.

The moderator, **Isabelle Michou**, Partner, Quinn Emmanuel, Paris, France, opened the session by pointing out that national courts are increasingly asked to decide challenges to arbitral awards rendered by investment tribunals. Indeed, there are more and more awards in this field being set aside by the courts at the seat of arbitration or refused enforcement.

Robin Oldenstam, Partner, Head of International Arbitration, Mannheimer Swartling, Stockholm, Sweden, explained that the Swedish court has a specialised division which exclusively deals with arbitration, rendering fully reasoned and detailed decisions. According to the case law, under the Swedish Arbitration Act, the Swedish court may undertake a full review in circumstances where a tribunal has dismissed a case without having ruled on its merits.

Mathias Audit, Partner, Audit Duprey Fekl, Paris, France, discussed two topics arising in recent French case law: jurisdiction over claims by dual citizens and corruption. For example, corruption is regarded as a matter of substance and of international public policy by the French court, justifying the fact that it may conduct a *de novo* review in these specific cases.

Jagpreet Sandhu, Associate, Lalive, London, United Kingdom, explained that the English courts are unafraid to remit cases to tribunals. They seem to be sufficiently sophisticated on investment treaty issues and comfortable with addressing questions of jurisdiction arising thereunder. However, this may raise questions regarding the intrusiveness of the national courts.

Regarding the Belgian case law, **Erica Stein**, Partner, Dechert LLP, Brussels, Belgium, noted that the Belgian Court of Appeal recently refused to enforce an award on the basis of international public policy, deciding that evidence that came to light after the award was rendered indicated that the tribunal had relied on misleading evidence when coming to its decision.

In another matter, the Court of First Instance annulled an award on public policy grounds, seemingly on the basis that the judge was uncomfortable with the arbitrators' reasoning on the issue of denial of justice.

The speakers agreed that their national courts all appeared sufficiently equipped to investigate and decide on challenges to arbitral awards. However, there is room for improvement. Mathias Audit gave the example of the recently created International Commercial Chamber of the Paris Court of Appeal, which is constantly adapting to the complexity of arbitration and the issues it may raise. Regarding the introduction of new evidence, the speakers believed it mostly to be beneficial, while emphasising that its use should be on a case-by-case basis.

Submitted by Ellen Treilhes, Student at the Master 2 Arbitration and International Trade Law (MACI), Versailles Paris-Saclay University, Versailles, France

Mining Disputes and the African Continent: Income, Environment and Human Rights, on 31 March 2022, hybrid event in Paris, France and by Webinar

On 31 March 2022, Gide Loyrette Nouel held a conference on: 'Mining Disputes and the African Continent: Income, Environment and Human Rights', as part of this year's PAW.

The panellists were Doctor **Hervé Lado**, West & Central Africa Regional Manager at Natural Resource Governance Institute, **Jean-Baptiste Harelimana**, President of the African Academy of International Law Practice & Lex Climatica, **Thomas Lassourd**, Senior Economic Analyst at the Natural Resource Governance Institute, **Alexander Vagenheim**, Senior Legal Officer at Jus Mundi, **Alexandra Munoz**, Partner at Gide in International Arbitration and Alternative Dispute Resolution (Paris office), **Saadia Bhatty**, Counsel at Gide in International Arbitration and Alternative Dispute Resolution (London office), **Magueye Gueye**, Counsel at Gide in International Projects and Tax (Paris office), **Etienne Kochoyan**, Associate at Gide in International Arbitration and Alternative Dispute Resolution (Paris office), and **Vincent Carriou**, Associate at Gide in International Arbitration and Alternative Dispute Resolution (Paris office).

Left to right: Alexandra Munoz and Saadia Bhatty

From the outset, the panellists underlined the increasing number of disputes in the extractive industry, especially in the oil and gas industry and the mining industry, both flourishing on the African continent. It was noted that Africa has the largest reserve and concentration of natural resources in the world. The mining industry in particular, accounts for 30% of Africa's resources today. The key challenge for African States, it was remarked, is to maximise the economic and fiscal benefits of mining activities and the revenues derived from them, in consideration of the fact that these resources are non-renewable.

The panellists emphasised three major factors that have led to mining disputes:

i. Mining agreements and negotiated tax regimes that are unfavourable to African States,
ii. Tax collection, and
iii. changing circumstances (such as the variation of costs of raw material).

The panellists also noted a further development of interest to the mining industry: more transparency. Over the past ten years, several governments have adopted a practice towards more transparency by making mining contracts, as well as environmental and social impact studies, and environmental and social management plans, public. This practice of increased transparency has led to a so-called 'citizen monitoring'. It was also remarked that mining companies are beginning to implement social integration budgets.

The Covid-19 health crisis has also contributed to parties seeking a revision of certain contract provisions. For instance, while some jurisdictions do not require companies to obtain prior

approval from a government ministry before ceasing and/or suspending production due to economic reasons, it was emphasised that, in recent years certain States explicitly require that such prior approval be obtained .

Discussing arbitral disputes involving Africa, it was pointed out that in the past five years alone, there has been an exponential increase in investment arbitrations involving African States, with almost forty ICSID arbitrations filed against an African State between 2018 and 2022 alone. Looking in particular at the types of mining disputes involving African States, it was noted that the majority is related to metallic ores. Mining activities gives rise to complex disputes for three reasons:

i. The inherent risks of this industry (these are projects that take place for over ten to fifteen years, obtaining a license is not always a guarantee of revenue, and the deposits are sometimes difficult or too costly to extract);
ii. Mining activities usually develop under State supervision;
iii. Most mining activities take place in environmentally and socially sensitive areas.

The panellists also discussed the legal issue of the admissibility of counterclaims brought by States against investors highlighting a series of cases where the State had brought counterclaims relating to the protection of environmental or human rights (in particular, *Burlington Resources Inc. v. Ecuador*, *Perenco Ecuador Ltd. v. Republic of Ecuador* and *Urbaser SA and Consorcio de Aguas Bilbao Bizkaia v. Argentina*). A panellist also emphasised the important role played by *amicus curiae* submissions, as a way to enhance transparency and to support such counterclaims (see for instance. *Biwater Gauff (Tanzania) Ltd. v. United Republic of Tanzania* and *Piero Foresti, Laura de Carli & Others v. The Republic of South Africa*).

The conference concluded with a review of current legislation and treaties on the African continent that may affect the future of mining disputes. More specifically, it was observed that there is an ongoing wave of BITs reform in Africa. Since 2010, there has been an increasingly frequent reference to the protection of human rights and the environment in investment treaties (see the Morocco-Nigeria BIT (2016), the Pan-African Investment Code and the SADC Model Treaty were cited as examples). Furthermore, there is a notable change in recent treaties on the African continent with the inclusion of States' right to regulate (for instance, to protect the environment and public health), additional limitations on investors' rights, and towards increased restrictions on the right to settle disputes by arbitration (arbitration is excluded as a method for the settlement of specific types of investor-state disputes). These significant changes, both substantive and procedural, will indubitably have an effect on the types of mining disputes the African continent will face in the near future.

Submitted by Alexandra Munoz, Partner at Gide, Paris, France, and Saadia Bhatty, ArbitralWomen member, Counsel at Gide, UK
*With thanks to Ms. Patricia Khoury for her assistance in the preparation of this report.

Renewable Energy and Arbitration, on 31 March 2022, hybrid event in Paris, France and by Webinar

As part of the 2022 Paris Arbitration Week, Three Crowns held a conference on 'Renewable Energy and Arbitration'. The panel was comprised of Marc Péresse (Head of Legal Offshore Wind at EDF Renewables), Fabien Roques (Executive Vice President with Compass Lexecon and Associate Professor in Economics at Paris Dauphine and at the European University Institute), and Kathryn Khamsi (Partner at Three Crowns). Shaparak Saleh (Partner at Three Crowns) acted as moderator.

Left to right: Fabien Roques, Shaparak Saleh, Marc Péresse, Kathryn Khamsi

The panellists discussed the special features of renewable energy projects today, and how they are likely to give rise to arbitration proceedings in the future, from the perspective of an arbitration lawyer, an expert and an in-house counsel. They focussed on three main topics: financing and construction; offtake arrangements and economic fundamentals; as well as regulation by the State. The panel's discussions are summarised below.


Attendees to the event

Financing and Construction

Arbitration constitutes the natural forum for disputes concerning renewable energy projects. The industry is relatively young, and technologies are all fixed cost, heavy on CAPEX and low on OPEX, which means that it is critical to have a set of contracts that ensure the investment will be repaid over time.

The panellists highlighted a unique feature of renewable energy projects: the extent to which they are third-party financed. The multiplicity of contracts into which project companies enter begs the question of what happens when project contracts are concluded before securing financing, and financing is not secured thereafter. Contract drafting can assist in such cases.

Offtake Arrangements and Economic Fundamentals

Renewables, which up to a few years ago were more costly than their alternatives, are now becoming competitive in many jurisdictions, without the need for State subsidies. The nature of the agreements is therefore changing and there is more exposure to market price, as well as volume and counterparty risks. To mitigate such risks, renewable energy producers and developers may secure offtake arrangements with large industrial offtakers. Another option is to aggregate a large number of users to buy energy from suppliers, who themselves contract with renewables producers.

Another way to mitigate risks is through risk allocation clauses. For example, market risks can be dealt with by clauses that trigger adaptation or renegotiation in case of market change, whereas regulatory risks can be addressed through change in law clauses. All parties have an interest in clarity of the contract; and parties to multiple contracts should ensure that the chosen remedy in one contract has its back-to-back equivalents in the other project contracts.

Regulation by the State

Different types of regulatory changes may impact renewable energy projects and may give rise to arbitration: unilateral change of tariffs and/or contractual arrangements by the State, changes relating to

i. the offtake contract in the context of corporate power purchase agreements;
ii. the range of conditions for licensing the project;
iii. connecting the project to the network; fiscal changes, changes affecting the balancing or profiling risks, or environmental constraints.

Again, contract drafting is crucial in such cases.

Submitted by Shaparak Saleh, ArbitralWomen member, partner, Three Crowns LLP, Paris, France and Marie-Provence Brue, associate, Three Crowns LLP, Paris, France

The New Space Race: Risks and Opportunities, on 31 March 2022, by Webinar

On 31 March 2022, Catherine Amirfar, ArbitralWomen member and Co-Chair of Debevoise & Plimpton's International Dispute Resolution and Public International Law Groups, moderated a panel discussion titled 'The New Space Race: Risks and Opportunities', organised as part of Paris Arbitration Week 2022 (PAW 2022). The panel grappled with the possibilities and challenges arising from the 21st century transformation of space exploration from the sole province of State-driven missions to a landscape increasingly dominated by private commercial actors.

Catherine Amirfar initiated the panel with a brief introduction to the public international space law framework. She described how the foundational treaties were agreed in an

Left to right: Catherine Amirfar, Chris Kunstadter, Julien Cantegreil, David Bertolotti, Lynn Zoenen

age in which space was dominated by competition between a small number of State space agencies. Today, gaps in international regulation can be filled in part by national laws, which can also account for the changed landscape of space exploration. **David Bertolotti**, Director for Institutional and International Affairs, Eutelsat, provided as an example France's national space law, which requires private entities to register and insure space objects and includes provisions to limit the creation of debris in space.

Julien Cantegriel, CEO, SpaceAble, described how private actors may also contribute to the creation of norms as part of the regular capacity-building process. **Lynn Zoenen**, Principal, Alpine Space Ventures, suggested that, where governments work hand-in-hand with private space actors, new laws can be developed efficiently and in a way that keeps apace of investment and technological advances. She went on to describe the range of new technologies and applications emerging in the field. She noted that companies are quickly developing new technologies to decrease the costs of launching space objects and thereby increase access to space. Technologies are being developed and leveraged to address needs on Earth, including increased broadband capacity and improved environmental monitoring.

The flip side of increased investment and accessibility, however, is the increased risk of overcrowding, debris creation, and collision. **Chris Kunstadter**, Global Head of Space, AXA XL, discussed how insurance companies can function as quasi-regulators to incentivise risk mitigation by private space actors, and Mr. Bertolotti described how private actors can implement risk mitigation in their planning and operations.

Mr. Kunstadter noted that, notwithstanding improved regulation and risk mitigation, increased activity in space will lead to increased disputes arising in space. Mr. Cantegriel suggested that technology is being developed to precisely identify the locations and speed of objects in orbit, which can be used to adduce evidence and determine liability for in-space collisions.

As Ms. Amirfar noted in the course of the panel, we are witnessing exponential growth in the number of private actors operating in space and in the technological capacities that today characterise space exploration. We are, likewise, witnessing the necessary revision and development of a system of international and domestic legal norms governing activity in space. The PAW 2022 panel provided a wide-ranging view into the risks and opportunities arising from these developments.

Click here to view a recording of the event.

Submitted by Ina Popova, ArbitralWomen member, Partner, Debevoise & Plimpton LLP, New York, USA and Paris, France

Sports arbitration, on 31 March 2022, in Paris, France

On 31 March 2022, as part of Paris Arbitration Week 2022, the BVI International Arbitration Centre, organised a hybrid round table webinar on 'Sports arbitration', which was hosted by Advant Altana. The webinar brought together a panel of distinguished practitioners to share their respective experiences in sports-related disputes.

The moderator, ArbitralWomen member **Hana Doumal**, Registrar at the BVI International Arbitration Centre, opened the session by welcoming the in-person and online participants and by introducing the speakers.

ArbitralWomen member **Chiraz Abid**, from Paris I Panthéon-Sorbonne and Associate in the Construction and Arbitration department of Advant Altana, Paris, France, gave a general presentation of sports arbitration. She explained that a sport dispute could be resolved either by *ad hoc* arbitration or by institutional arbitration, and that sports disputes tend to fall into two categories: commercial disputes, and disputes of a disciplinary nature. The commercial disputes cover disputes relating to the performance of commercial contracts, such as those relating to player transfers, broadcasting rights, employment issues, sponsorship rights or the staging of sporting events. The disciplinary disputes cover alleged breaches of a particular governing body's regulations designed to protect, amongst other things, the integrity of its sport, including anti-doping and match fixing regulations.

Left to right: Victor Bonnin Reynes, William Sternheimer, Hervé Le Lay, Hana Doumal & Chiraz Abid

Victor Bonnin Reynes, a Spanish dual-qualified lawyer specialised in international arbitration, admitted in Spain and as a solicitor in England and Wales, and Arbitrator at the Court of Arbitration for Sports (CAS), explained the specificities of sports arbitration and noted the existence of a *lex sportive*. In sports arbitration, in contrast with commercial arbitration, arbitral decisions are often confidential and not systematically available to guide subsequent arbitrators. He also mentioned the expedited nature of sports arbitration proceedings, the question of the hearing of anonymous witnesses, the mechanism of deliberations, and gave insights on the possibility of exporting some features of sports arbitration to other fields of commercial dispute resolution.

William Sternheimer, Partner at Morgan Sports Law in Lausanne and Arbitrator at CAS, explained the functioning of CAS, the biggest player in the field of sports arbitration. He addressed the distinction between the CAS Ordinary Division and the CAS Appeal Arbitration and explained that the Appeal Procedure does not mean that CAS appeals tribunals have the power to review *de novo* the facts, legal findings or evidence of a previous instance. William also tackled the comparison between CAS and other specific institutions and sets of arbitration rules, such as the Qatar Sports Arbitration Foundation or the Basketball Arbitral Tribunal.

Hervé le Lay, Partner in the International Litigation & Arbitration Practice of Brown Rudnick in Paris and Arbitrator at CAS, discussed the nature and scope of judicial review of international sports arbitration awards in the context of enforcement and annulment of awards. He noted that, given that CAS is based in Lausanne, the annulment proceedings are primarily brought before the Swiss federal Tribunal. He further noted that, although generally enforcement of CAS arbitral awards is made according to the New York Convention, FIFA has its own specific system of enforcement.

Finally, the speakers addressed some critics in the sports arbitration context, including the issue of the closed list of arbitrators. They pointed out that the rationale for this restrictive system is that it ensures that sports law specialists decide these disputes, but contrasts with standard commercial arbitration, where parties have the freedom to appoint an arbitrator of their choice. The speakers closed the discussion by providing tips to students and young practitioners on how to break into sports arbitration.

Submitted by Hana Doumal, ArbitralWomen member, Registrar at the BVI International Arbitration Centre, and Chiraz Abid, ArbitralWomen member, PhD and Associate, Construction and Arbitration department of Advant Altana, Paris, France

The Rise of Government Interference and Investment Protection, on 31 March 2022, by Webinar

The panel on 'The Rise of Government Interference and Investment Protection', hosted by Baker McKenzie, took place on Thursday 31 March 2022, as part of Paris Arbitration Week. It gathered ArbitralWomen member **Katia Finkel**, Senior Associate, Baker McKenzie (London) as co-moderator, along with **Karim Boulmelh**, Counsel, Baker McKenzie (Paris) and panellists **Florian Cahn**, General Counsel, Framatome GmbH (Nuremberg); **David Chmiel**, Managing Director, Global Torchlight (London); as well as **Claudia Benavides Galvis**, Partner and Global Disputes Chair, Baker McKenzie (Bogota); **Edward Poulton**, Partner, Baker McKenzie, London, and **Roula Harfouche**, HKA (London).

Katia Finkel framed the discussion by highlighting that the rise of government interference has grown in the last decade, with the rise of the rhetoric and concerns around national interests, but also –and most imminently– the rise of national security, in the context of the Covid-19 pandemic, energy transition, and a possible energy crisis.

David Chmiel set the political scene by sharing his insights from a political risk angle. He explained that government intervention is the paradigmatic risk that comes to a foreign investor's mind, although it seems to have heightened lately. He cautioned against four misconceptions:

i. that political risk is tied to a certain region, as it is now a global risk, with governments around the world strengthening laws regarding the oversight of foreign investment based on national security;

Top to bottom, left to right: Claudia Benavides Galvis, David Chmiel, Ed Poulton, Florian Cahn, Houla Harfouche, Karim Boulmelh, Katia Finkel

ii. that risk is tied to a specific sector i.e. oil and gas, with examples of government interference around greener energies in Mexico (Lithium) and Peru (Copper);
iii. that the risk is inherently economic in nature, when it is a question that exists on many political lines, and
iv. that interference is carried out only by way of expropriation.

Florian Cahn delved on the impact of regulatory measures on the energy industry. He pointed out that high regulation and support for investors from government actors are typical in the energy sector. Paving the way for the bankability of projects (particularly in electricity), there needs to be stability and security of the investment, for projects that span over years. The utility must be able to rely on stable energy tariffs to get a return on the investment, whether foreign or domestic. This was seen in the discussion relating to subsidies in the UK nuclear projects, prompting a strong resistance, notably from Germany and Austria. He concurred with David Chmiel on the shift in which emerging economies are not the only ones regulating, giving the example of the nuclear phase-out in Germany, which has triggered a large arbitration. He concluded that one of the issues with the energy crisis in Ukraine is that, beyond export, supply chains are affected in nuclear energy (i.e. nuclear fuel elements), which is tied to countries that are subject to government intervention.

The second part of the discussion centred on possible legal protections for foreign investment. Claudia Benavides Galvis focussed on the typical protections that foreign investors may resort to. In Latin America (Latam) there has been a 'new phase' since the 2000s nationalisations, with an exponential query by investors on government intervention. The region saw its GDP contracted significantly by the pandemic, and populism has been on the rise. This situation has triggered the implementation or threat of government measures, as seen with the Mexican electricity reform. In Colombia, a presidential candidate has tabled proposals similar to those of the Chilean elected president, advocating *inter alia* for changes to the public utilities' framework, nationalisation of pension funds among others. As to foreign investment protection, there is a vast net of investment agreements signed by Latam States that investors can resort to. She predicted that in the next years, claims against Latam States would emerge not only from nationalisations, but also from the implementation of government measures aimed at protecting the environment and public health.

Karim Boulmelh noted that the regulatory changes happening in Latam are also found in the EMEA region. The risk of government interference, even if backed by the public, can trigger a risk of diminished trust from foreign investors over time. Hence the particular strategic importance to investors of the arbitration mechanism embedded in treaties.

Edward Poulton referred to the Baker McKenzie report on trends in global nationalisation risk. Government interference is now a global phenomenon: increasingly, governments of States that are traditional exporters of foreign investment are regulating certain aspects of investment. The UK National Security and Investment Act 2021 is an example. He noted that, inevitably, national security is expanding beyond the military context, with the example of healthcare brought to a paroxysm with 'vaccine nationalism' in western countries. Disputes may arise in this context. For instance, with the water nationalisation in the UK, the debate was not on nationalisation itself – which appeared to have public support-, but rather on the value of the compensation paid.

On the topic of compensation, Roula Harfouche stressed that the main issues around damages are found in claims for violation of investors' legitimate expectations, covering not only liability but also quantum, as shown by the Spanish renewables ECT cases. The first damages awarded were effectively based on forecasts that assumed that the feed-in tariff regime would have continued as before, which resulted

in large damages awards that gave investors very high internal rates of return (IRR). The latest trend of Spanish awards assumed a modified tariff regime that did not breach ECT obligations, with a lower IRR. She highlighted the recent RREEF Infrastructure award, in which the tribunal fixed the amount of the damages based on a specific rate of return on the investments made. She concluded on a pragmatic note that, for evidentiary purposes, it would be advisable to document legitimate expectations throughout the project.

The panel concluded that government interference entails very complex political dynamics, which require a nuanced understanding of what forces the hands of governments. It is therefore key that investors consider protections and risk mitigation strategies upfront.

Submitted by Munia El Harti Alonso, Senior Consultant, Xtrategy LLP, Washington DC, USA

Monetisation of arbitral awards: contractual structure and potential issues at the enforcement stage, on 1 April 2022, in-person event

Left to right: Peter Griffin, Carine Dupeyron, Laurent Aynès

On 1 April 2022, on occasion of the Paris Arbitration Week, **Carine Dupeyron** and Professor **Laurent Aynès** (Darrois Villey Maillot Brochier), with the participation of **Peter Griffin** (Slaney Advisors Limited), hosted a conference titled 'Monetisation of arbitral awards: contractual structure and potential issues at the enforcement stage'.

The event aimed at presenting the increasing practice of award monetisation, which can be defined as the transfer of all or part of the economic rights to an international arbitration award to a third party. This practice came across as an efficient way to both (i) contain the risks connected to the uncertain outcome of long-lasting arbitration proceedings and (ii) cut down the risks related to the enforcement of arbitral awards.

Throughout the presentation, the panellists discussed different structures to monetise awards, depending on the seller's considerations (i.e., via award assignment agreements or the sale of a special purpose vehicle which owns the award or a participation agreements) and provided practical advice on how to draft award assignment contracts. In this regard, the speakers drew the audience's attention to key provisions to include in an award assignment deals such as, *inter alia*, the definition of the scope of rights assigned, the description of the respective role and involvement of the seller and buyer, and the allocation of risk in the event of impairment of the award.

Lastly, the discussion turned to the analysis of the relevant case law concerning the risks that may be encountered when enforcing the so called 'assigned awards' under French law and other laws governing the issue of standing and validity of the assignment, and the variety of defences that might be raised by the creditors of the assigned awards.

Submitted by Carine Dupeyron, Partner at Darrois Villey Maillot Brochier, Paris, France

Two Debates: Arbitral Institutions & Kout food: UK v France, on 1 April 2022, in Paris, France

Left to right: Thomas Sprange, Karishma Vora, Gustavo Laborde, Gaëlle Filhol, Alexis Mourre

Laborde Law organised two events on 1 April 2022, the first a roundtable discussing among representatives of leading arbitral institutions on a range of current issues, and the second one, an Oxford-style debate on the motion 'This house believes that the French approach is better to determine the law applicable to the arbitration agreement', comparing French courts' approach to that of English courts on this issue. This is a report on the second event.

The rift between France and England deepens with each new judgement by the courts of these two countries on this issue and on the question of the 'extension' of the arbitration agreement to non-signatories.

The latest edition of this 'debate' is the *Kabab-ji SAL (Lebanon) v. Kout Food Group (Kuwait)* case, where the UK Supreme Court found that the arbitration agreement was governed by English law, considering that the parties had expressly chosen said law by subjecting the whole contract, which included the arbitration agreement, to said law. The court concluded that, as a matter of English law, the Kout Food Group, a non-signatory of the contract, was not bound by the arbitration clause; therefore, the court ultimately rejected the request to enforce the award.

In turn, across the Channel, the Paris Court of Appeal dismissed the application to set-aside the same award, confirming the arbitral tribunal's findings that French law applied to the arbitration agreement and that the arbitrators had jurisdiction over the non-signatory third party to the arbitration agreement. The Paris court agreed with the findings of the arbitral tribunal that Kout Food Group was directly involved in the performance of the contract; therefore, despite being a non-signatory party, it was a party to the arbitration agreement.

The stage was set for stellar debaters of the likes of **Alexis Mourre**, from MGC Arbitration and ArbitralWomen Board member **Gaëlle Filhol**, from Betto Perben Pradel Filhol, who represented the French side. Defending the other side of the channel were the formidable **Thomas Sprange** QC from King & Spalding and **Karishma Vora** from Barrister 39 Essex Court. Moderating the debate was **Gustavo Laborde**, Founding Partner of Laborde Law, in Paris.

It was put forward by one of the debaters (you may know him from his time as ICC Court President) that, if anyone brought a novel argument to this time-honoured debate, the intervener would be gifted a champagne bottle!

The debate was opened by Karishma, who introduced the facts of Kout Food and enunciated the three criteria, implementing a conflict-of-laws approach used by English courts for determining the law applicable to arbitration agreements:

i. express choice of law by the parties;
ii. implied choice of law, with a rebuttable presumption that the law of the main contract applies; however, if the arbitration agreement is invalid under this law, the fallback implied choice is the law of the seat; or
iii. in the absence of any express or implied choice of law, the law with which the arbitration agreement is most closely connected.

Gaëlle jumped into the square ring and argued that the English conflict-of-laws approach leads to legal uncertainty and is unsuitable for international business. In contrast, French courts follow the theory of economic reality of the transaction, taken as a whole. That is, they apply *règles matérielles* (substantive rules) for ascertaining the validity and scope of the arbitration agreement.

French arbitration law, she continued, considers arbitration agreements to be independent from the main contract and from the law governing it. An

international arbitration agreement will be valid if the consent of the parties, even non-signatories, is established and if it does not purport to violate international public policy. French courts apply these substantive rules, bypassing conflict-of-laws rules, to every application for enforcement of an award, irrespective of the seat of arbitration.

Furthermore, French courts consider the common will of the parties, without any need to refer to a national law. Accordingly, the arbitration agreement is generally deemed to extend to a non-signatory involved in discharging obligations arising from the contract, for instance.

For his part, Alexis argued that the French rules and presumptions are:

i. simple, as they ensure the application of the arbitration agreement to the entities who are responsible for the performance of the contract;
ii. pragmatic, as they avoid the fragmentation of the dispute and ensure that the arbitral tribunal deals with all economic and legal aspects of the dispute;
iii. efficient, as they allow the tribunal to assess the entire dispute.

Alexis explained that the French rules work on presumptions established by the participation of the non-signatory in the negotiation, performance or termination of the contract. This is to be distinguished from a transfer or assignment of the contract. In *Kout Food,* the arbitral tribunal had found it had jurisdiction based on Kout Food Group's involvement in the negotiation and performance of the contract, appointment of officers, and in its termination, despite being a non-signatory third party to it. However, the fact that French courts 'extend' the arbitration agreement to non-signatories does not mean that they dispense with the requirement for proof of consent, which may always be contested. Rather, the threshold for determining the existence of such consent may arguably be categorised as simply lower.

At the opposite end of the room, Thomas went head-to-head with team France and contended that the English approach is more flexible since it respects the choice of law made by the parties. This presumption, he said, makes sense for three reasons:

i. 75% of the cases before the English court's commercial division are international, thus English judges are adept in the application and interpretation of foreign laws;
ii. the English approach is also practical: it presupposes that if parties have chosen the law applicable to the underlying agreement, then it is most likely that they have understood or wanted said law to also govern the arbitration agreement, and this must be honoured;
iii. the New York Convention advocates for the conflict-of-laws approach when it refers, for instance, to 'the law of the country where the award was made' as governing the validity of the arbitration agreement, in the absence of a choice by the parties.

Thomas added that, where the parties do not specifically consider the law applicable to the arbitration agreement (which usually they do not), the issue of common intention does not arise. In *Kout Food*, there was a valid arbitration agreement with the two parties involved. The issue was therefore not of validity, but rather of extension of the arbitration agreement to a non-signatory third party.

The debate truly came alive when the rebuttals kicked in with full swing!

Alexis argued that the English approach leaves out Kout Food Group, the non-signatory party that had nevertheless performed all the essential obligations under the contract. This makes the arbitration agreement inefficient since each party is forced to pursue separate litigation. Furthermore, in Dallah, another case involving the issue of extension of the arbitration agreement to a non-signatory, the English courts applied French Law in a way that was, ironically, ultimately contradicted by the French courts.

In *Kout Food*, Alexis continued, the English courts applied the *lex contractus* to the arbitration agreement, ignoring the elemental principle of separability. English courts approach this issue on a case-by-case basis, whereas the French approach's *raison d'être* is to ensure that the arbitration agreement applies to the whole dispute, i.e., all possible claims and possible parties, to avoid fragmentation of the dispute.

Gaëlle chimed in to observe, in connection with the 'extension' of the arbitration agreement to non-signatories, that the French approach for determining the law applicable to the arbitration agreement may be difficult to apply in practice, because it aims at establishing the actual intention of the parties, where there might have been none at the time of drafting. On the issue of extension of the arbitration agreement to the non-signatory, in *Kout Food*, the Paris court concentrated on the factual reality of the case, i.e., Kout Food Group's involvement in the performance of the contract.

Putting her foot down, Karishma maintained that Kout Food Group was not a party to the original agreement. Therefore, in the absence of assignment, it may not be deemed to be a party to the main contract nor, by extension, to the arbitration agreement. However,

Niyati Asthana

by virtue of the group-of-companies doctrine, applied by the French court, Kout Food Group was deemed to be a party to the arbitration agreement. The English approach was considered complex by the French team because it involves the interpretation of the law of the seat (as per one of the criteria identified by English courts) foreign laws by the courts of the respective country, in this case, French courts. On the other hand, French courts only apply French rules of law, a more parochial approach at odds with the spirit of truly 'international' arbitration.

Reading the room, Thomas extemporised as a peacemaker and presented a solution. According to him, perhaps both the French and the English could consider including the New York Convention into their local law. Indeed, if that had been the case under English arbitration law, the English court would have found that French law applied to the arbitration agreement in *Kout Food*, given that the seat of the arbitration was in Paris. This would have led to the 'extension' of the arbitration agreement to Kout Food Group, thus allowing the enforcement of the award against such party, in England .

Alexis cautioned, however, that not every law of the seat is conducive to arbitration. French law is also exceptional for its universal scope: It applies uniformly to arbitrations seated in France or abroad, when enforcing an award in France, which leads to maximum efficiency.

The debate concluded with ArbitralWomen Board member **Maria Beatriz Burghetto**'s champagne winning intervention. She reflected on the French approach, supposedly based on the parties' common intention. In those cases where the parties have neither chosen the law applicable to the arbitration agreement nor the seat (not an uncommon occurrence), in an ICC arbitration, for example, the ICC Court will fix the seat on the basis of factors other than the (unexpressed) common intention of the parties. On the other hand, under English law, if the law governing the main contract invalidates the arbitration agreement, then the parties' presumed choice-of-law for this clause is ignored, which appears to contradict the general English approach. She noted, in a nod to Thomas's conciliatory viewpoint, that both approaches tend to prioritise the application of a law that supports the validity of the arbitration agreement. Alexis concurred with this argument by giving the example of Switzerland, where the courts will select Swiss law in such a case, notwithstanding the law applicable to the main contract (see Article 178(2), PILA).

Both teams presented compelling arguments in support of their respective positions, to the point that 'the house' decided not to declare which approach had carried the day. Ultimately, it is up to arbitration users to decide which side they will cast their vote for.

Submitted by Niyati Asthana, Lawyer, Laborde Law, Paris, France

Attendees to ArbitralWomen's breakfast gathering during PAW 2022, on 30 March 2022, at FTI Consulting's headquarters

News you may have missed from the ArbitralWomen News webpage

This section of the ArbitralWomen Newsletter reports on news posted recently on the ArbitralWomen News webpage that readers may have missed.

Careers in Arbitration Celebrates International Women's Day 2022 with "Break the Bias: My Way" Campaign

By Amanda J. Lee, Founder of Careers in Arbitration
15 March, 2022

To celebrate International Women's Day, **Careers in Arbitration**, founded by ArbitralWomen Board Member **Amanda Lee**, launched its third annual International Women's Day campaign titled "**Break the Bias: My Way**".

Careers in Arbitration, a social media-based platform established with the goal of promoting diversity in arbitration by making it easier for arbitration enthusiasts, wherever they are based, to enter and excel in the field of international arbitration.

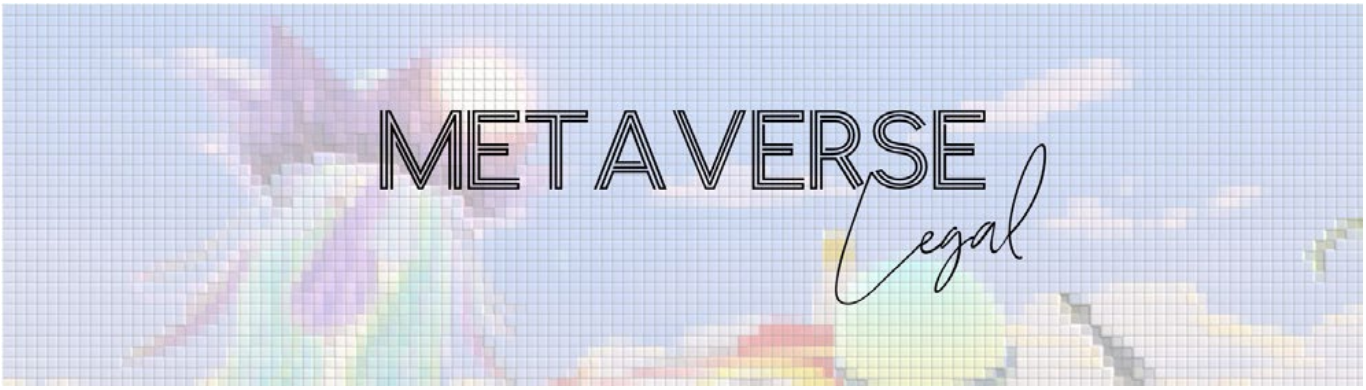
For "**Break the Bias: My Way**", Careers in Arbitration shared the profiles of women in arbitration who have taken arbitration career paths that are less travelled, helping to inspire those are interested in alternative roles in the field and to 'break the bias' that a career in arbitration is limited to counsel work or practice as an arbitrator.

The campaign featured the career journeys of academics of different levels, experts, third party funders, tribunal secretaries, research assistants, stenographers, women occupying a wide range of institutional roles, legal tech professionals, and marketing professionals.

The campaign featured ArbitralWomen members **Fahira Brodlija, Christiane Deniger, Susan Franck, Ayse Lowe, Camille Ramos-Klee**, and **Patricia Shaughnessy**, together with **Ericka E. Estrada S., Iolanda Ghica, Francoise Ingabire, Funmi Iyayi, Victoria Kigen, Niamh Leinwather, Carolina Pitta e Cunha, Clémence Prévot, Catherine Reeves, Misha Talwar, Lydia Tang, Rebecca Warder, Leah Willersdorf, Blerina Xheraj** and **Elina Zlatanska**.

The posts are available on LinkedIn and will find a permanent home on Careers in Arbitration's website in the future. Search for the hashtag #CiAMYWAY to read the career stories of all those who participated, to benefit from their top tips for a career in arbitration, and to learn about their sources of inspiration.

The Future is Here: Celebrating the Launch of MetaverseLegal!



By ArbitralWomen Board Member, Elizabeth Chan, and ArbitralWomen Member, Emily Hay, together with Ekaterina Oger Grivnova
15 March, 2022

MetaverseLegal was launched in January 2022 by a group of forward-thinking members of the legal community, including several ArbitralWomen members, as a decentralised LinkedIn page dedicated to the legal implications of the Metaverse.

ArbitralWomen is pleased to support this exciting new initiative to promote thought leadership on the Metaverse and its implications for the diverse legal community, including those in international arbitration and alternative dispute resolution.

ArbitralWomen Board Member and MetaverseLegal Administrator **Elizabeth Chan** explains, "*MetaverseLegal offers a cross-practice resource for lawyers to understand the Metaverse. This is a necessary resource at a time when we are trying to grapple with what exactly it is and what impact it will have for legal practice. Each week, MetaverseLegal's administrators offer several posts on different aspects of the Metaverse." Focussing on the implications for the legal community, Elizabeth Chan notes, "For example, recent LinkedIn posts have addressed what the Metaverse is, the current virtual reality technologies for accessing it, what are decentralised autonomous organisations (DAO), and the impact of Metaverse transactions for competition law. The posts are short and simple, which adds to their educative value for lawyers, whatever their discipline.*"

ArbitralWomen member and MetaverseLegal Administrator **Emily Hay** commented, "*MetaverseLegal has particular relevance for international arbitration and dispute resolution lawyers. New legal disputes will be an obvious consequence of the upcoming Web 3.0 technological revolution. Web 3.0 will add a new angle to traditional disputes and open the path towards completely different controversies. It will give rise to unprecedented challenges, draw new dimensions of dispute resolution and create new procedural playgrounds for dispute lawyers.*"

MetaverseLegal is the brainchild of **Ekaterina Oger Grivnova**, an international arbitration lawyer at Allen & Overy, who handed over decentralised governance to all MetaverseLegal administrators. "*We have numerous arbitration practitioners among MetaverseLegal's administrators, who have contributed posts and articles on the relevance of the Metaverse to our field of practice*," commented Ekaterina. "*Topics have included legal jurisdiction in the Metaverse, dispute resolution methods for Metaverse disputes, and investment treaty disputes in the Metaverse.*"

The diverse team behind MetaverseLegal is engaged in a cut-

The MetaverseLegal Team as of March 2022:

MetaverseLegal was initiated by Ekaterina Oger Grivnova. MetaverseLegal is created, owned and governed by all administrators (listed alphabetically): Folasade Abiodun, Oyindamola Abodunrin, Gizem Adalı, Oluwatosin Maryjane Adunmo, Vansh Aggarwal, Docia Agyemang Boakye, Farah Alabed, Oana Jeanina Astilean, Ivan Bracho Gonzalez, Paulina Brzezinska, Layla de Carvalho, Ceren Ceyhan, Elizabeth Chan, Ritwik Chawla, Vivian Ch'ng, Rachel Chiu, Anastasia Choromidou, Reena Choudhary, Alba Crespo Vildosola, Belemir Demirbag, Celestino Dincă, Alexandru-Andrei Dumitru, Rebecca-Georgia Dunca, Elif Duranay, Elifsu Erdem, Bamisé Fatoke, Ányela Yésica Flores Yapuchura, Karim Haidar, Elif Ceren Halatçı, Emily Hay, Amine Khaliss, Michael Komuczky, Seher Kurtuluş, Alexandre Lercher, Maxime Liccioni, Omar Mahmoud, Camila Maida, Alexander Mathai Paikaday, Andres Gustavo Mazuera Zuluaga, Daniel Morales, Elias El Murr, Chidimma Njoku, Ekaterina Oger Grivnova, Abisayo Olawuyi, Shriya Pandey, Denisa Pascu, Julian Luna Pastore, Daniela Pineda Rios, Maroof Rafique, Bernardo Regueira Campos, Laura Reichen, Célestine Renault, Jason Ruiz, Viktoria Schneider, Iliass Segame, Farhan Shafi, Karina Sibilska, Adesanya Temitayo, Nafosat Toshtemirova, Shresth Vardhan, Nicolás Junco Villamizar, Lindsay Woods, Ishan Zahoor and Filippo Zuti.

The MetaverseLegal Team continues to grow and change as new members join.

ting-edge experiment of decentralised governance and management for this web-based initiative. MetaverseLegal is jointly created, owned and governed by its many administrators who all volunteered to be part of the project. Ekaterina notes, "*As a result, the group of administrators reflects a diverse cross-section of the legal community, including lawyers with a range of experience in terms of legal practice (disputes lawyers and transactional lawyers), non-legal expertise (consultants), years of experience (from trainees to partners), nationality, gender, socio-economic background and more.*"

As Emily Hay explains, "*There is no hierarchy among MetaverseLegal's administrators. All decisions are made by a voting process using an app called Discord. Rules of governance have also been developed in this decentralised way. The group is currently working on many different projects, including creating a blog. More ambitiously, the group is working on the possibility of creating a DAO and potentially even creating its own Non-Fungible Token (NFT) collection of artwork by lawyers for charity and to fund the future work of MetaverseLegal.*"

As of March 2022, the arbitration practitioners among MetaverseLegal's administrators include:

- Elizabeth Chan, Allen & Overy, Hong Kong
- Emily Hay, Hanotiau & van den Berg, Brussels, Belgium
- Ekaterina Oger Grivnova, Allen & Overy, Paris, France
- Filippo Zuti Giachetti, MDisputes, Milan, Italy
- Anastasia Choromidou, Volterra Fietta, London, UK
- Alexander Mathai Paikaday, Paikeday & Paikeday Lawyers, New Delhi, India
- Bernardo Regueira Campos, Guandalini Isfer Oliveira Franco Abogados, Curitiba, Brazil
- Michael Komuczky, Lamsky Ganzger Goeth Frankl, Vienna, Austria
- Viktoria Schneider, Hanefeld, Hamburg, Germany
- Karim Ali Haidar, KN Legal, Dubai, UAE
- Rachel Chiu, White & Case, London
- Juliette Asso, LaLive, Geneva
- Laura Reichen, Gantenberg Dispute Experts, Germany

"*In other words, MetaverseLegal is an important innovation hub for legaltech. The process and outcome of this group's work will offer important learnings for the international arbitration community, indeed the legal community anywhere and everywhere,*" observed Elizabeth.

"*One can already see the significant representation of women among the management and administrators of MetalverseLegal,*" commented ArbitralWomen President **Dana MacGrath**. "*The inclusive nature and lack of hierarchical structure of MetarverseLegal would appear to naturally appeal to and draw from a diverse cross section of the community.*"

New Developments for the ERA Pledge Female Arbitrator Search Tool!

By Mirèze Philippe, ArbitralWomen co-founder, Member of the ERA Pledge Steering Committee and of the ERA Search Committee
15 March, 2022

The Equal Representation in Arbitration Pledge ("Arbitration Pledge" or "ERA Pledge") has announced that, as of 9 March 2022, the International Council for Commercial Arbitration ("ICCA") is the new official host of the ERA Pledge Female Arbitrator Search Tool. This collaboration between the Arbitration Pledge and ICCA is an exciting next step for the ERA Pledge Female Arbitrator Search Tool!

As many in the arbitration community may know, The ERA Pledge Female Arbitrator Search Tool is a resource that was launched in 2016 which allows practitioners and parties who require assistance in their search for diverse arbitrators to identify qualified female arbitrators to hear their cases.

Arbitrator search requests are submitted to the ERA Search Committee on a confidential basis by submission of a completed arbitrator search request form on the ICCA website here. The ERA Search Committee, a sub-group of the ERA Steering Committee. and is comprised of more than 20 members

from dispute resolution organisations who work on a volunteer and independent basis. No members of the ERA Search Committee are employed by law firms.

Arbitrator request forms are sent directly to the independent ERA Search Committee, which responds by providing a list of female candidates based on the criteria set out in the arbitrator search form. The ERA Search Committee does not recommend arbitrators (nor does the Arbitration Pledge or ICCA) but rather provides a list of female candidates responsive to the request form. Additionally, no member of the ERA Search Committee may be listed as a potential candidate on the list provided in response to a request form.

To achieve the ERA Pledge call for appointment of female arbitrators on an equal opportunity basis, it was considered that arbitration users may sometimes need assistance. Therefore, to further facilitate their search for female arbitrators, The ERA Pledge provides links to a few organisations that list female arbitrator profiles on their respective websites. If users require further assistance, the online request form allows parties and counsel to complete the form to indicate the expertise and criteria sought to enable the ERA Search Committee to prepare a list of potential female candidates.

The ERA Search Committee may include on a list of potential female arbitrator candidates some women who are less well-known in the arbitration community but have the relevant experience and profile responsive to the request form.

The ERA Search Committee does not contact any potential female candidates and no women who on a list provided by the ERA Search Committee are aware that their names have been included on a list. It is entirely within the discretion of the arbitration user to contact any female candidate on a list provided by the ERA Search Committee.

We are excited about this latest collaboration between the Arbitration Pledge and ICCA to promote women and diversity in international arbitration.

Women in Dispute Resolution (WIDR) Celebrates its Ten-Year Anniversary!

By ArbitralWomen President Dana MacGrath
11 April, 2022

Ten years ago, a group of women formed **Women in Dispute Resolution** (**WIDR**) as a task force in the **Dispute Resolution Section** of the **American Bar Association** to assess the status of women in the profession, identify barriers to selection as a neutral, and to develop initiatives to increase participation of women in the dispute resolution profession. Many of the WIDR founders were and are ArbitralWomen members.

To honour its ten-year anniversary, WIDR is celebrating the stories of its members who contributed to WIDR's success over the past ten years with its series "**Ten Years, Ten Voices**" through a series of WIDR social media LinkedIn posts featuring articles and stories, a special edition of "Just Resolutions" in July 2022, and a special podcast later in 2022.

"*The stories of 'why' and 'how' WIDR came to be, and 'what' it has meant to so many, inspire us as we continue the work of advancing diversity in ADR*," said WIDR co-chairs **Felicia Boyd** of Norton Rose Fulbright and ArbitralWomen Member **Deborah Hylton** of Hylton ADR Services. "*We are excited to continue this work alongside ArbitralWomen, the ERA Pledge, R.E.A.L., the Ray Corollary Initiative, the ADR provider institutions committed to diversity, and so many other partners across our profession.*"

WIDR thanks its founders and past leaders for their vision and determination to launch WIDR and thanks those who continue to lead for taking up the work, making the time to share life and business lessons, and continuing to inspire.

Congratulations to WIDR on its work over the past ten years and its ongoing celebration of the contributions of the many women who made WIDR a success!

You can follow the WIDR handle on LinkedIn to read the inspiring stories being shared.

myArbitration soon to feature even more female practitioners

Left to right: myArbitration co-hosts Nata Ghibradze and Victoria Pernt

22 May, 2022

In 2020, ArbitralWomen member Victoria Pernt founded the diversity initiative *myArbitration* – a video series about the world of arbitration featuring rising and prominent practitioners alike.

After two successful seasons, Victoria takes *myArbitration* even further: on 11/11/22, together with Season Three, *myArbitration* will launch a new interactive format to feature and connect even more female practitioners. The format has been created in collaboration with the arbitration community, supported by ArbitralWomen Board members Rebeca Mosquera and Amanda Lee.

The significance of *myArbitration* in bolstering equality and diversity in international arbitration was recognised by the community as the initiative was nominated and shortlisted for this year's GAR Pledge Award.

"*myArbitration has been a rewarding and eye-opening experience*", says Victoria. "*It is a great honor to showcase our community and raise awareness for diversity and our struggles. The more stories I hear, the more convinced I am of how important it is to share them and to speak up*!"

To encourage and facilitate just that, *myArbitration* will soon call for contributions from all ArbitralWomen members (for details see myArbitration.eu).

Meanwhile, *myArbitration* has been filming further interviews for Season Three – *myArbitration RELOADED* (see loading stations with launch date on photos above).

Much like the first two seasons, Season Three will feature prominent and rising arbitration practitioners, and specials about arbitration events and topics.

Season One tackled topics from gender and socio-economic diversity to mentoring and showcasing initiatives, with Mirèze Philippe, Gabrielle Nater-Bass, Amanda Lee, Crina Baltag, Chiann Bao, Gaëlle Filhol, Stefanie Pfisterer, Lucy Greenwood, Catherine Rogers, Milena Djordjevic, Eric Schwartz and others.

Season Two featured further outstanding members of the community from across the globe: Claudia Salomon, Sherlin Tung, Rebeca Mosquera and Nata Ghibradze (the first *myArbitration* co-host), John Fellas, Eduardo Zuleta, Friederike Schäfer, Hjordis Hjartardottir, Beka Injia, Sophie Tkemaladze, and Jaba Gvelebiani.

myArbitration co-host Nata Ghibradze encourages ArbitralWomen members to feature their home turfs as co-hosts: "*Come join the terrific experience of myArbitration!*"

(Above, left to right: *myArbitration* co-hosts Nata Ghibradze and Victoria Pernt)

All episodes are available on *myArbitration.eu* and YouTube. For the latest updates, insights and BTS content, follow *myArbitration* on LinkedIn and Instagram.

ArbitralWomen congratulates *myArbitration* co-hosts on their inspiring initiative and wishes them continued success in Season 3!

Victoria Pernt

Launch of the Equal Representation for Expert Witnesses (ERE) Pledge

By ArbitralWomen Members and ERE Pledge Co-Founders Kathryn Britten and Isabel Kunsman
9 June, 2022

The Equal Representation for Expert Witnesses (ERE) Pledge has been launched to drive, on an equal opportunity basis, an increase in the number of women appointed as expert witnesses in dispute resolution procedures worldwide. The ERE Pledge's objective is to achieve a fair representation of women as experts as soon as practically possible, with the ultimate goal of gender parity.

Discussing the launch, and the ERE Pledge's raison d'être, Co-Founder and AlixPartners Managing Director **Kathryn Britten** commented:

"Having acted as an expert witness in major commercial disputes for almost 30 years, I have been consistently shocked by how few women have been appointed as my opposing experts – yet I have consistently seen very capable women producing excellent work as 'Number 2'. We need to do something to ensure that talented women have the opportunity to act as expert witnesses in their own right."

Co-Founder and AlixPartners Managing Director **Isabel Kunsman** added:

"As an expert witness, I am acutely aware of the need to do more in my own profession. There are many impressive women working in this field but the higher up the ranks you go, the lower the number of women you see, particularly among testifying expert witnesses."

In 2020, curious to assess the landscape and attribute some concrete figures to this issue, Kathryn and Isabel, through AlixPartners, commissioned a survey. From the results, they discovered that 56% of arbitrators and lawyers had seen no women in expert roles in the last three years, while only 1% had seen four or more women in expert roles in the same period.

Analysis of ICSID awards from 2016 to 2020 also showed that, out of 75 awards, only 3% included female experts. This percentage was even lower than the percentage included in the PwC/Queen Mary Survey published in 2020, which showed that 11% of the 180 awards in arbitral proceedings administered by the ICC in Paris and New York between 2014 and 2018 included female experts.

While this all made for disappointing reading, in sharing these statistics, Kathryn and Isabel have been encouraged by members of the international arbitration community to increase the visibility of gender disparity in arbitration expert testimony, and such members have offered their support to promote the representation of testifying women experts in arbitration.

Over the last six months, the Co-Founders have been engaging with various members of the international arbitration and litigation community to discuss an initiative to address the scarcity of female expert witnesses in litigation and arbitration. As part of the initiative, they have been working with other experts, lawyers and interested parties, to create a pledge – similar to the Equal Representation in Arbitration (ERA) Pledge – to drive a commitment to create equal opportunities for female expert witnesses in all areas of dispute resolution.

The Co-Founders' efforts to engage the community have already seen results and have achieved significant milestones to date: First, the formal launch of the ERE Pledge itself on a new website, and second, the creation of a Steering Committee for the ERE Pledge to promote it, gather advice and perspectives, and implement additional ideas to address the scarcity of testifying female expert witnesses.

Isabel commented: "We are ensuring that the Steering Committee features members from across the consulting firms active in the litigation and arbitration space, and we now have representatives from many leading consultancies and accounting firms."

Kathryn added: "We are both thrilled that senior members of ArbitralWomen, the ERA Pledge, and leading arbitral bodies have also already agreed to join the Global Steering Committee."

The Co-Founders strongly believe that for the ERE Pledge to succeed it must be nurtured across firms, generations, and geographies.

In summary, the goals of the ERE Pledge are to:

- increase, on an equal opportunity basis, the number of women appearing as testifying experts, in order to achieve proportional representation and eventually full parity;
- support the hiring, mentoring, and promotion of female experts;
- create a coalition of supporters and advocates for female testifying experts in the world of dispute resolution;
- encourage women to aspire to be expert witnesses in their chosen professions;
- widen the pool of expert witnesses available and help to promote the visibility of the qualifications of female expert witnesses.

Read the commentary to the Pledge.

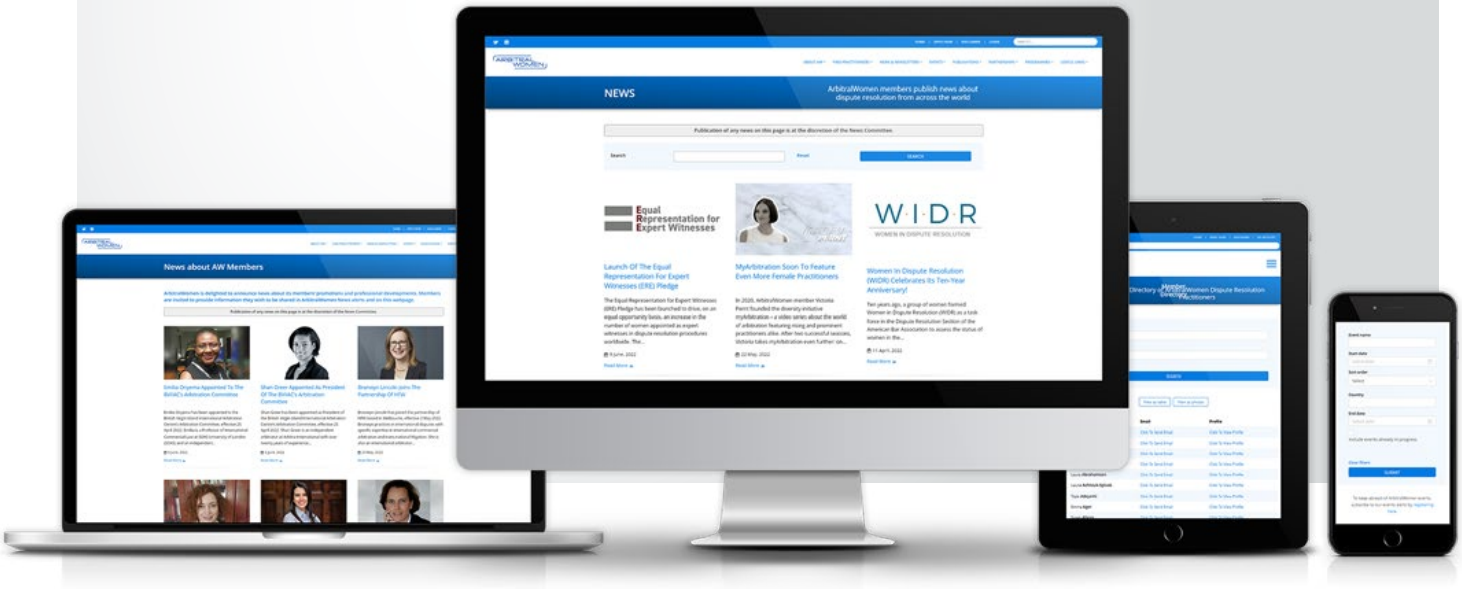
Take the Pledge.

And finally, a message from the ERE Pledge team – please contact us with your ideas and/or questions regarding the ERE Pledge.

Left to right: Kathryn Britten and Isabel Kunsman

Keep up with ArbitralWomen

Visit our website on your computer or mobile and stay up to date with what is going on. Read the latest News about ArbitralWomen and our Members, check Upcoming Events and download the current and past issues of our Newsletter.



SPEAKING AT AN EVENT?

If you would like ArbitralWomen to share details of a forthcoming external ADR speaking engagement on its website, in its Event Alerts and on social media, please provide the following information to marketing@arbitralwomen.org **a minimum of 14 days before the event is due to take place:**

- Title of event
- Date and time
- Names of ArbitralWomen members speaking at the event
- Venue or format/platform (virtual, webinar or otherwise)
- How to register / Registration link
- Flyer
- Short summary of the event for advertising purposes

ArbitralWomen thanks all contributors for sharing their stories.

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AW Activities at a Glance: click here

Membership Runs Now Annually from Date of Payment

ArbitralWomen Individual & Corporate Membership

ArbitralWomen's website is the only hub offering a database of female practitioners in any dispute resolution role including arbitrators, mediators, experts, adjudicators, surveyors, facilitators, lawyers, neutrals, ombudswomen and forensic consultants. It is regularly visited by professionals searching for dispute resolution practitioners.

The many benefits of ArbitralWomen membership are namely:

- Searchability under Member Directory and Find Practitioners
- Visibility under your profile and under Publications once you add articles under My Account / My Articles
- Opportunity to contribute to ArbitralWomen's section under Kluwer Arbitration Blog
- Promotion of your dispute resolution speaking engagements on our Events page
- Opportunity to showcase your professional news in ArbitralWomen's periodic news alerts and Newsletter
- Visibility on the News page if you contribute to any dispute resolution related news and ArbitralWomen news
- Visibility on the News about AW Members to announce news about members' promotions and professional developments
- Ability to obtain referrals of dispute resolution practitioners
- Networking with other women practitioners
- Opportunity to participate in ArbitralWomen's various programmes such as our Mentoring Programme

We encourage female practitioners to join us either individually or through their firm. Joining is easy and takes a few minutes: go to 'Apply Now' and complete the application form.

Individual Membership: 150 Euros.

Corporate Membership: ArbitralWomen Corporate Membership entitles firms to a **discount on the cost** of individual memberships. For 650 Euros annually (instead of 750), firms can designate up to five individuals based at any of the firms' offices worldwide, and for each additional member a membership at the rate of 135 Euros (instead of 150).
Over **forty firms** have subscribed a Corporate Membership: click here for the list.

ArbitralWomen is globally recognised as the leading professional organisation forum for advancement of women in dispute resolution. Your continued support will ensure that we can provide you with opportunities to grow your network and your visibility, with all the terrific work we have accomplished to date as reported in our Newsletters.

ArbitralWomen membership has grown to approximately one thousand, from over 40 countries. Forty firms have so far subscribed for corporate membership, sometimes for as many as 40 practitioners from their firms.

Do not hesitate to contact membership@arbitralwomen.org, we would be happy to answer any questions.