



The ArbitralWomen Newsletter Committee wishes you all the best for 2021!

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ArbitralWomen and diversity initiatives flourish in a virtual reality

Although most of us are looking forward to concluding 2020, this newsletter issue and our six previous ones in 2020 demonstrate that the international dispute resolution community adapted to and embraced the virtual reality in which we have found ourselves. We bring you an interview with **Meg Kinnear** followed by reports on the numerous virtual events in which our members have been involved, including events during Canadian, Australian and Hong Kong Arbitration Weeks. It is clear from the many event reports that the inability to congregate in person has not stopped ArbitralWomen and its members from creating online events to share knowledge and thought leadership. It is equally clear that the promotion of diversity in arbitration has continued in the most challenging of circumstances. We conclude this newsletter with news you may have missed from the ArbitralWomen News Page.

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President's Column



Dana MacGrath, ArbitralWomen President and Investment Manager, Legal Counsel at Omni Bridgeway

Concluding A Difficult Year and Celebrating the Latest 2020 Diversity Initiatives

As 2020 draws to a close, we pause and remember those whose lives were lost and those who suffered in other ways across the globe this year. 2020 was an unusually difficult year. Despite its difficulties and challenges, new diversity initiatives were launched. We came together as a community to work to achieve incremental progress toward gender parity and inclusiveness. Even in the darkest days of 2020, the international dispute resolution community united to support each other.

While most of this edition of the Newsletter covers substantive and diversity events between mid-September and the end of October 2020, we note here a very recent development to celebrate over the year-end holidays, a time when we look back and celebrate the positive achievements of 2020.

In December 2020, the European Commission signed on to the [Equal Representation in Arbitration \(ERA\) Pledge](#), signalling the EC's commitment to gender diversity in respect of trade and investment dispute settlement activities, and put in place a new system for the appointment of adjudicators to handle disputes under the EU's trade and investment agreements that aims to step up its enforcement of trade agreements and ensure gender balance, as described in the [EU press release](#). The first concrete application by the EC of the ERA Pledge principles was launched on 18 December 2020, in conjunction with EU Member States, when the EC announced its [invitation](#) for applications to serve in an arbitration panel and/or as part of the trade and sustainable development expert panel in bilateral disputes under EU trade agreements. We congratulate and thank all who contributed to this positive achievement at year-end 2020.

Turning to the contents of this Newsletter edition, we start with an interview of ICSID Secretary General **Meg Kinnear** by ArbitralWomen Board Member **Affef Ben Mansour**.

We then share approximately 37 reports on virtual events between mid-September and late October 2020, on substantive dispute resolution topics and diversity issues.

Finally, we republish some news from our News Page that you may have missed. This includes an [article](#) by ArbitralWomen Board Member **Maria Beatriz Burghetto** on the launch of an initiative by the Paris-based members of the Arbitration Pledge: (i) a Checklist of [Best Practices for the Selection of Arbitrators](#), which encourages diversity in arbitrator selection, among other useful criteria, and provides information on potential sources of candidates, and (ii) a [Survey](#) in France that explores the criteria and methods employed by arbitration users nominating arbitrators. We also include an article by ArbitralWomen President **Dana MacGrath** on the launch of the [Arbitration Pledge Corporate Guidelines](#), specifically designed for corporates to use when implementing the diversity aims of the Pledge. We also include an [article](#) about the launch by ArbitralWomen member **Victoria Pernt** of myArbitration, a series of short video interviews with people from the world of arbitration that provides a platform to feature both prominent and rising practitioners, with the aim to make the field more accessible, equal and diverse.

We wish you and your loved ones good health, safety, and continued support from family, friends and colleagues in 2021.

*Warm holiday wishes from
ArbitralWomen Board of Directors!*

Women Leaders in Arbitration

Meg Kinnear

Affef Ben Mansour, ArbitralWomen Board Member, had the pleasure to interview Meg Kinnear, Secretary General of the International Centre for Settlement of Investment Disputes (‘ICSID’) and share her story with our readers. Affef and Meg had a “virtual coffee” —as we say in our new normal! — on 9 September 2020, one day before Meg’s re-election by the Administrative Council of ICSID for a third term.



Meg, your name and position are known to all in the international arbitration community. While preparing this interview, I watched videos of your lectures and conferences, read or, to be more precise, re-read your articles and biography in order to be able to introduce you to our readers. Ultimately, with some humility, I prefer to borrow the words of Professor Andrea K. Bjorklund when she introduced you at the 2019 Brierly lecture you gave at McGill University: ‘In fact, Meg needs no introduction. International arbitration is a little bit like showbusiness or soccer, football to Europeans. Some people need only one name and everyone knows who that is. So, in football, one can say Pelé or Marta or Rooney or Ronaldo (...). In showbusiness, we have Cher and Beyoncé. In arbitration, go anywhere in the world and say that you had spoken to Meg and everyone knows whom you mean!’ I am delighted to have the opportunity to invite you as an ‘International Arbitration Star’ to share your story with our readers.

Before we discuss your career at ICSID, can you tell our readers about how your interest in international dispute resolution began?

I was always interested in international relations and studied international political science in my undergraduate studies. I was also very interested in law. So, putting the two together seemed very logical. I began my career in domestic litigation, representing the Government of Canada. This included a lot of court work, but also arbitration and some mediation. It was not until 1999 that I turned exclusively to international dispute settlement, when I joined the Trade Law Bureau of Canada. Our work at the Trade Law Bureau included litigation of WTO, NAFTA and bilateral investment treaty cases on behalf of Canada. That was the period when NAFTA investment cases were just starting to be known in the legal profession, and we were developing our investment practice group. It confirmed to me that all the skills you develop as an advocate in a domestic law setting are very useful when it comes to international dispute settlement.

Your experience includes the negotiation of treaties: Can you tell us about your experience in that field? In your opinion, what are the qualities required of a good treaty negotiator?

Treaty negotiation has been one of the most interesting and enjoyable experiences in my career. As a negotiator on behalf of Canada, I participated in a variety of treaty negotiations, including bilateral investment treaties, the Softwood Lumber Agreement—a treaty concerning a large and high-profile trade dispute between Canada and the United States—and the Free Trade of the Americas Agreement (FTAA). During the negotiation of the FTAA, I had the privilege of chairing the group negotiating the dispute settlement mechanism for the FTAA—which remains one of the highlights of my career.

Negotiation of treaties calls on different skills than advocacy. As a negotiator, you know what you must or would like to include in the treaty and what items you can concede, if necessary. But negotiation is a very collaborative exercise, with the aim of achieving a treaty that works for both parties. As a result, negotiation takes place in a collegial environment. At the same time, it is very strategic. You need to have a big picture of the policy goals your country wants to achieve and



Meg Kinnear, Secretary-General of ICSID (sitting, third from left), with H.E. Kosti Manibe Ngai, Minister of Finance and Economic Planning of South Sudan, at the signing of the ICSID Convention, photo by Deborah W. Campos, Washington, D.C., 18 April 2012

how you can translate these goals into that treaty. You really feel that you are building something, using both your policy and legal reflexes.

Treaty negotiation also requires discipline in terms of drafting, because you are very much aware that once the language is adopted, there will be those who subsequently interpret it but weren't present at the negotiations. You have to be extremely careful about the wording, considering different hypothetical situations: 'What if hypothesis A, B or C happens? Would the provision operate the way we think it will?' It is a fascinating experience. Treaty and memorial drafting have made me a strong proponent of plain language, and a believer in the importance of reading, re-reading, and then rereading your drafts again!

I would add a final skill that is necessary for treaty negotiation: imagination and innovation. Sometimes, the parties reach an impasse in the negotiations, and yet you must find or create a way forward that works for both parties. I have seen a lot of good negotiators come up with something novel that helps the parties work through what seemed to be an impossible hurdle, and it is a skill that I very much admire.

You started your career as Counsel at the Civil Litigation Section of the Canadian Department of Justice. You are qualified in Ontario and DC. What made you decide to take the litigation route? How has your litigation experience influenced your practice in treaty negotiations and in a very different position, when managing ICSID?

I always loved public speaking, putting an argument together with the facts, and being tested on the argument, so a litigation career seemed like the perfect (and only!) route for me. And I very much enjoyed the litigation parts of my career. But what has surprised me the most are the number of other parts of my career that have been equally interesting, challenging and rewarding.

My roles in the Government of Canada offered me wonderful opportunities and substantial responsibilities early in my career. When I first started, I thought it would be for a two-or three-year period, but fast forward 25 years later, I had had a very long and full career there! Government jobs allow you to participate in exciting issues at an advanced level, very early in a career, and it is easy to get addicted to the interesting work you are doing.

While working in government, I added new aspects to my skill set that I never thought would come in handy, but later turned out to be very useful. For example, when I was the Executive Assistant to the Deputy Minister of Justice, I had to interface with the political level of government and explain the legal views of the Department of Justice and how they affected the policies the government proposed to adopt. This was a good tutorial on how to develop practical options for a client.

My job as Executive Assistant also trained me on how to brief the media. This is the kind of thing you never learn in law school and yet later in life the media training I was given while working in the Government turned out to be a very useful skill set.

As I became more senior within the government, I started managing people, including a group of 70 staff at the Trade Law Bureau. These experiences helped me to develop management skills that have been very useful in my current role at ICSID.

Overall, I developed litigation skills at the Department of Justice, investor-State expertise from negotiations and


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casework, management experience at the Trade Law Bureau, and met many people working in trade and investment in different countries. So, when I saw that ICSID was recruiting a Secretary General, I knew it was the perfect opportunity for me. There are not many jobs in the world that would allow me to pull together all the different aspects of my career and do what I love. Being Secretary General of ICSID offered all of those opportunities and has been the job of my dreams!

Over the past decade, the concept of resolving international investment disputes through mediation has gained traction among States, practitioners and academics. How is ICSID supporting recourse to mediation by investors and States? Did ICSID administer investor-State mediation in the past? If yes, how frequently?

Mediation is something we are working on a lot. Although there have been relatively few investor-State mediations, the demand is growing. There have been about five ICSID administered mediations. At least two of those ended in a successful agreement: one where the parties are still implementing the agreement, and one where the agreement was easy to implement and done fairly quickly.

As part of the current ICSID rules amendment process, we have developed an entirely new set of stand-alone investor-State mediation rules. In February 2020, ICSID released its latest working paper with proposed amendments to its procedural rules for resolving international investment disputes. [Working Paper #4](#)  features a ‘clean’ version of the rules, as well as the rules in ‘track changes’, and includes the proposed Mediation Rules.

We tried to make this set of mediation rules as broadly available as possible. Hence, they will be available upon consent of the parties. Importantly, the State would not need to be an ICSID member to participate in the mediation. Investors and States can already use this draft set of rules as a basis to engage in investor-State mediation under the auspices of ICSID. ICSID has also organised a number of seminars and courses on mediation, including a specialised training program for potential investor-State mediators. We are currently working on a training course for government officers on dispute prevention and the management of a mediation. We hope that this training will make it easier for governments to assess the option of mediation in disputes with investors.

One of the main difficulties for the development of investor-State mediation stems from the ability of State officials to negotiate and sign off agreements, right? Even States’ ministers are not necessarily available or willing to sign off on an agreement obtained by mediation, whereas it is more politically acceptable for them to abide by an award rendered by a third party, i.e., an arbitral tribunal, or accept an agreement proposed by a conciliator.

A number of State officials have mentioned that sometimes they do not feel comfortable mediating a dispute, perhaps because it can be portrayed as compromising the government’s interests or goes beyond what they are authorised to do. As a result, the development of mediation requires that States are sensitised to mediation as part of the spectrum of available dispute settlement options and consider the advantages of an early settlement in some cases.

We are conscious that it is important for States to develop in-house frameworks that allow them to mediate. We are trying to encourage States to build this formal framework—whether by legislation or simply an in-house government policy—that gives them the ability to participate in mediation and to respond quickly in ICSID disputes. This is part of the training we are developing and has been the subject of the courses we have given to date.

An interesting provision in the proposed Mediation Rules actually builds participation of the State officials into the process. Rule 20(4) of the Draft ICSID Mediation Rules provides that at the first session, each side shall ‘(a) identify a representative who is authorized to settle the issues in dispute on its behalf; and (b) describe the process that would be followed to implement a settlement’. As a result, it is important and necessary that the *representative of the State who is authorised to settle* be present in the room, understand the ongoing mediation process and know the extent to which the State can engage in the process.

ICSID has administered more than 700 arbitration cases, 13 conciliation cases and a few mediation processes. Does ICSID collect information on the implementation of the outcomes of these proceedings?

Generally, ICSID does not supervise the implementation of the award or settlement, unless both parties ask the Centre to do so. This happens mostly in cases where a settlement between the parties expressly provides that each party will notify the Centre of the steps taken to implement it. In addition, we might informally learn of the success of the implementation,

Counsel, States and investors —every segment of the alternative dispute settlement field— must think about diversity and contribute to change.

We have been communicating with States to remind them to keep diversity in mind when nominating arbitrators to panels (...) and we are seeing considerable progress. (...) We have also increased the number of gender or regionally diverse candidates that ICSID proposes for appointment when requested to do so by parties. (...) We often see that female nominees proposed by ICSID are subsequently nominated as party appointed arbitrators.

either by being copied in an email exchange or verbally, in a passing conversation with one of the parties.

With respect to arbitration, my understanding is that most of the awards are honoured voluntarily. However, in instances where the award has not been honoured, we might get correspondence from the award holder notifying us of this. In such cases, we bring the provisions of the ICSID Convention requiring compliance with the binding award to the attention of the government and ask them to advise us of the steps they will take to implement it.

Since mediation is a new discipline in ICSID, we hope that once ICSID Mediation Rules are in place, parties would allow us to tell some success stories of what was helpful and what made the difference. We think this would encourage others to try mediation in disputes where there was a possibility of an amicable resolution between the parties.

On 1 May 2020, ICSID and UNCITRAL released the long-awaited Draft Code of Conduct for Adjudicators in Investor-State Dispute Settlement (“ISDS”). Do you think that this Code will encourage more diversity in the landscape of investment arbitrators?

The Code released in May constitutes a first basic draft to stimulate discussion among stakeholders and we are receiving comments from States and private parties at this time. There will obviously be some changes as the Code is discussed.

This Code does not have a specific diversity provision like you find, for example, in the International Criminal Court (See [Article 36\(7\) of the Rome Statute of the International Criminal Court](#)). However, the issue of diversity arises in several contexts, in particular with respect to repeat appointment and double hatting. Many commentators suggest that repeat appointment acts as a de facto barrier to appointment of more, and more varied, candidates, and as a result this phenomenon makes it more difficult to ensure an overall diverse group of arbitrators. On the other hand, many commentators point out the fundamental tenet of freedom of appointment in a system based primarily on party appointment and the importance of developing expertise, efficiency and experience through repeated appointment, so the policy goals may be difficult to reconcile.

With respect to double hatting, again, there are pros and cons to consider. Some would argue that gender, regional and age diversity is most likely to be enhanced by bringing new and younger persons to the field. At the same time, few of these individuals can afford to simply leave their legal practice and start being a full-time arbitrator. If one had a strict policy prohibiting double-hatting, many of these candidates could not even attempt to move into arbitrator jobs.



Third Meeting of State Representatives on the Proposed Amendments to the ICSID Rules, Washington, DC., 11–15 November 2019



Djibouti Signs the ICSID Convention, Washington, DC., 12 April 2019 — Meg Kinnear with the Djibouti delegation (sixth from left).

It is important that such considerations be discussed by the States and stakeholders. We have had some suggestions of having a transition period or an exemption for example, for the first five cases in which the same person is involved.

Now we reach the ‘ArbitralWomen question’! How have you seen the place of women in the legal and the dispute resolution fields evolve over the last 30 years that you have been practising? And where should changes be evident in the next 30 years?

There has been a huge evolution! The arbitrators and counsel participating in ICSID cases today are such a different looking group from what they were 30 years ago. And that is something that is very heartening to me. When I graduated in the eighties and was starting my career, it was still difficult for women to get the jobs at what were considered then to be the best firms, even more so in litigation. Back then, women were being streamed into disciplines like family law or research, which is great if that is what you want to do, but there was almost a stereotyping of the areas where women were ‘allowed’ to practice.

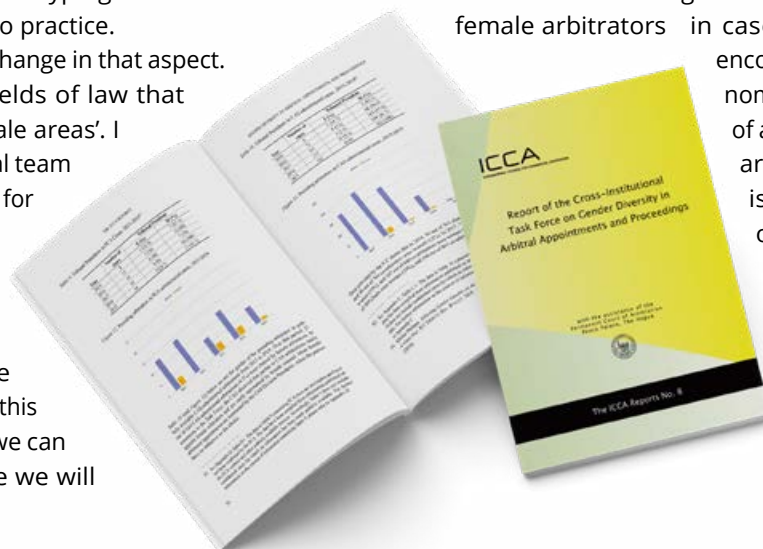
Today, I see a huge change in that aspect. There are not many fields of law that people think of as ‘female areas’. I see women in every legal team when they come to ICSID for a hearing. Increasingly, many women are ‘first chairs’, or arbitrators, which is visible evidence of progress. We have to keep building on this impact and ultimately, we can arrive at a place where we will

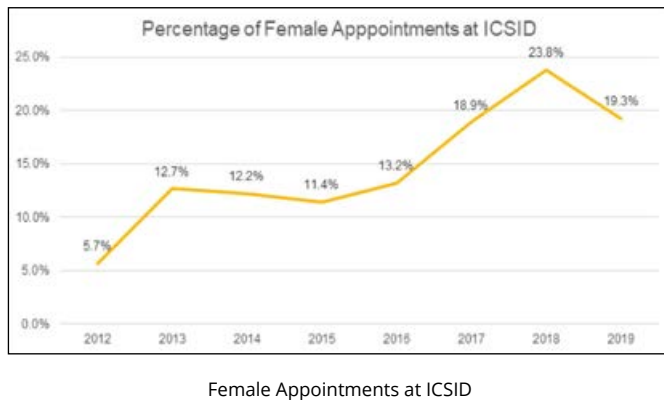
not take notice of the number of female lawyers that are in a legal team. Instead, we can remove the label of ‘female lawyer’ and just refer to the number of capable and effective lawyers on a legal team. I am positive that we will get there, as there is an immense increase in the number of terrific women graduating from law school and entering practice.

How will ICSID address the lack of women members in arbitral tribunals, ad hoc committees and conciliation? Does ICSID have any initiatives in place to support women’s appointments as arbitrator and /or conciliator? Have you seen any evolution in this respect during your career?

Yes, we address the presence of women in this field in several ways. First, as an international institution that is part of the World Bank Group, we work in a wonderful environment that supports diversity and inclusion. Almost 80% of our staff at ICSID are women. Two of our three senior managers are women, and four of our six team leads are women.

We have seen a significant evolution in the number of female arbitrators in cases and have taken steps to encourage consideration of female nominees. For example, our panel of arbitrators, in which candidates are selected by Member States, is currently still composed of only about 19 to 20% women. We have been communicating with States to remind them to keep diversity in mind when nominating arbitrators to panels. In the last year I have seen so much greater awareness of this from States





who are nominating to panels, and we are seeing considerable progress.

We have also increased the number of gender or regionally diverse candidates that ICSID proposes for appointment when requested to do so by parties. This is clear in our statistics (see chart). While the percentage of female appointment was around 5.7% in 2012, it reached 23% in 2018. This increase can also be attributed to the use of ballots and list methods of appointment. In this regard, our in-house policy is always to include one or more female candidates on the ballot or the list. Even if a woman is not selected in that particular case, she will get 'on the radar' of counsel who are frequently selecting arbitrators in cases. We often see that female nominees proposed by ICSID are subsequently nominated as party appointed arbitrators. It is not something we predicted, but we have seen this happen several times, and it is a side-benefit of proposing new names in the field!

We have also taken steps to make sure diverse candidates are visible, for example by including them on conference panels, in organising presentations, in our written materials or by writing for the ICSID Review. Visibility is one of the keys! Step forward, knowing that an appointment will not necessarily happen the first or second time, but it is your continued visibility and building confidence in your ability that seems to be the trick to it.

I should also say that it is not just the institutions who are responsible for diversity, although I believe they have an important role to play. Institutions have truly led the way to diversity: roughly a third of institutionally appointed arbitrators are female. However, one needs to be conscious that ICSID only appoints about 25% of the candidates in the first place. So, counsel, States and investors —every segment of the alternative dispute settlement field— must think about diversity and contribute to change.

The ICSID Secretariat is also involved in other activities, such as the appointing authority function of the Secretary General. Are you bound by the States' lists of arbitrators or do you include persons outside this list?

This will depend on the wording of the treaty. Some treaties expressly require that ICSID appoint arbitrators only from the ICSID panel of arbitrators or only from a list of adjudicators designated in the treaty. However, most treaties and contracts

I think the most important contribution from mentoring is just giving some encouragement to someone who is at an earlier stage in the journey and letting them know they are not alone!

do not require this and in such cases, ICSID will go outside the panel and include other candidates. Even in ICSID Convention cases, parties can agree to have ICSID propose persons who are not on the ICSID panel.

We are always looking for new people, so when one of us goes to an event or a hearing where counsel stands out, we make a mental note. Over time, we have identified many people who have the interest and the skills to do this. There is no formal process for including people outside the panel. Equally, we look at other lists compiled by other institutions, for example, the ICCA list or the ArbitralWomen list.

Based on your experience, do you have any advice for women seeking to further their careers in dispute resolution and in investment arbitration, whether as counsel, as arbitrator or as expert?

I have a few thoughts for counsel or arbitrators starting their careers. First, visibility is important. Even though it may feel uncomfortable, it is important to put yourself forward for opportunities, no matter how small they may be. Do not be hesitant to take every opportunity to develop and demonstrate your skills, as this will ultimately lead you to increasingly interesting, larger and complex cases, and more responsibility in those cases.

Second, do not be scared to take a risk. I think I have been scared to leave every job I have ever had, but when I did, I realised the next opportunity was even better than the last, and that I liked the feeling of trying to accomplish new things. So even though I am personally one of the worst procrastinators about trying new roles, I know that it is very important, and I encourage it for younger colleagues.

Is there any particular issue or topic that you would like to discuss and share with our readers?

I have been extremely lucky to have some fantastic mentors in my life, including some inspirational female mentors. This was wonderful from a learning perspective, but perhaps more important from the perspective of knowing you could succeed and not feeling like you had to fight every battle alone. Because my experience has been so positive, I feel it is very important to pass on this gift and to act as a mentor where I can. And often I think the most important contribution from mentoring is just giving some encouragement to someone who is at an earlier stage in the journey and letting them know they are not alone!

Reports on Events

GAR Interactive Europe, The GAR Live Debate: 'This house believes that most cases don't need an oral hearing', on 10 September 2020, by Webinar

The GAR Live Europe conference took place in a virtual format on 10 September 2020 and was rebranded 'GAR Interactive'. The final session featured the classic GAR Live 'Oxford Union' debate, with two teams being asked to argue in favour of, and against, a controversial motion: *'This house believes that most cases don't need an oral hearing'*.

The lively debate was judged by **John Fellas** (Hughes Hubbard & Reed) and **Klaus Reichert SC** (Brick Court Chambers), with the audience acting as third and final judge via live polling. ArbitralWomen member **Wendy Miles QC** (Twenty Essex), and **Ed Poulton** (Baker McKenzie) argued in favour of the motion, whilst ArbitralWomen members **Clotilde Lemarié** (Pinsent Masons) and **Sarah Vasani** (Addleshaw Goddard) argued against it.

The team for the motion assumed a rather bold position for international

arbitration advocates: A compelling argument based on a strict interpretation of an international arbitration 'case'. The team made the point that in most instances where a legal difference arose, the stage of an oral hearing was rarely reached, thereby making oral hearings unnecessary to most 'cases'. The time and cost implications of hearings, as well as their environmental impact, were also included in the arsenal of arguments invoked in support of the motion.

The team arguing against the motion focussed on the importance of oral hearings as a cornerstone of due process, highlighting the ways in which oral hearings afford arbitrators a unique opportunity to assess evidence, as well as a chance to efficiently confront the parties' final positions. As part of their plea in favour of oral hearings,

the team stressed the importance of the myriad unwritten information communicated during oral hearings for the decision-making process, emphasising that 'documents do not say it all'.

After some thought-provoking questions from the judges and the audience, the judges (perhaps unsurprisingly!) found against the motion.

(For the avoidance of any doubt, the judges clarified that the arguments presented by both teams did not reflect their personal views.)

A video recording of the debate will be available to view on GAR's website in due course.



GAR Interactive Europe

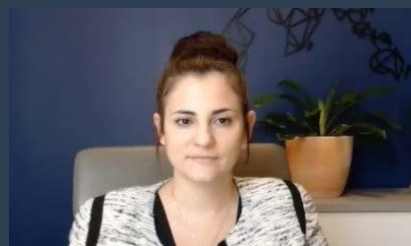
Submitted by Scheherazade Dubash, ArbitralWomen member, Senior Practice Development Lawyer, Pinsent Masons, London, UK

Construction Claims in the UAE, on 16 September 2020, by Webinar

On 16 September 2020, Masin, a global business advisory firm, in collaboration with Lexology, hosted an online webinar to discuss

construction disputes under UAE law. **Rohit Singhal**, Managing Director at Masin, was joined by **Antonia Birt** (partner, Curtis Mallet-Prevost Colt

& Mosle LLP and ArbitralWomen member); and **Shourav Lahiri**, (barrister, Atkin Chambers) as speakers. The event was oversubscribed



Left to right: Shourav Lahiri, Antonia Birt and Rohit Singhal

with more than 300 attendees.

The impact of Covid-19 on construction projects in the UAE was considered, as well other key legal and contractual considerations with respect to construction projects in the UAE, as well as practical steps for contractors and employers to limit risks of liability.

In particular, the webinar focused on the impact of COVID-19 on construction projects. Antonia Birt addressed available contractual tools (focussing on the FIDIC 1999 Red Book), as well as

certain practical tips when faced with Covid-19-related delay or increased costs. Contractors were also reminded to comply with the applicable notice provisions under their contracts to limit later disputes relating to notice issues. Rohit Singhal addressed various proactive steps which can be taken to reduce Covid-19-related risks in the context of construction claims, including with respect to document management tactics. Rohit Singhal also considered other current issues on construction projects in the UAE, including with respect to

changes in quantities or disagreements with respect to practical completion. Shourav Lahiri analysed the UAE law position on various current issues, including on the important issue of concurrent delay and recent consideration of the same under UAE law.

With thanks to Lexology for organising the event.

Submitted by Antonia Birt, ArbitralWomen member, Partner, Curtis Mallet-Prevost Colt & Mosle LLP, Dubai, UAE

The Good Faith Debate: English law and the International Tide, on 16 September 2020, by Webinar



Top to bottom, left to right: Olga Petrovic, Richard Firth, Sir Bernard Eder, Simon Firth, Philip Wood CBE QC, Vasanti Selvaratnam QC

On 16 September 2020, the London Shipping Law Centre (LSLC) in conjunction with Linklaters LLP and 36 Stone (London and Singapore) hosted a live webinar to consider the current role of good faith in English law and other common law countries. The event was expertly moderated by **Sir Bernard Eder**, well-known commercial arbitrator, Judge of the Singapore International Commercial Court and former Commercial Court Judge in London. The speakers were **Vasanti Selvaratnam QC**, Joint Head of Chambers of the 36 Group (London and Singapore) and Chair of the Education Committee of the LSLC; **Simon Firth**, partner at Linklaters LLP and a leading capital markets expert in the UK; **Philip Wood CBE QC (Hon)**, specialist in com-

parative financial law and former Special Global Counsel of Allen & Overy LLP and **Richard Firth**, former consultant of Linklaters LLP and trained mediator with over 35 years of experience in derivative and commodity markets. The rapporteur was **Olga Petrovic**, partner of Linklaters LLP. The panellists discussed the current approach of English law to good faith, which is typically characterised by adoption of a piecemeal approach to perceived problems of unfairness and considered recent developments in Canadian jurisprudence which has recognised a unifying principle of good faith in contractual performance and where two Supreme Court decisions on good faith are pending. As a result of probing questions from the Chair, the speakers debated whether

the certainty and predictability which makes English law an attractive choice for litigants would in truth be undermined if English law moderated its perceived hostility to embracing good faith as a doctrine. The event attracted a huge international audience who were able to pose questions at the end of the session. Good faith is a hot topic in England and was the subject of a public lecture delivered by Vasanti Selvaratnam QC to the shipping industry in November 2009, the substance of which has now been published in [2020] LMCLQ 232.

Submitted by Vasanti Selvaratnam QC, ArbitralWomen member, Joint Head of Chambers of the 36 Group, London (UK) and Singapore

‘Art et Arbitrage’ (Art & Arbitration) conference, on 17 September 2020, in Paris, France



Left to right: Catherine Kessedjian, Asoid García-Márquez, Armand Terrien

On 17 September 2020, the CFA-40 organised an event on the fascinating theme of art and arbitration in the magnificent courtyard of the Hôtel Alfred Sommier in Paris, in full respect of sanitary measures and social distancing.

Over 30 practitioners specialised in dispute resolution attended this event

moderated by some of the CFA-40 Board members: **Eleonore Caroit, Julie Spinelli, Anne-Marie Lacoste, Benjamin Siino and Anastasia Davis Bondarenko.**

Asoid García-Márquez (UNESCO), **Catherine Kessedjian** (University Panthéon-Assas Paris II) and **Armand Terrien** (Lawyer) shared their expe-

rience in this field and discussed the various challenges of litigation in the art world. While Asoid García-Márquez discussed interesting public international law aspects of disputes relating to restitution, Catherine Kessedjian and Armand Terrien discussed complex issues resulting from transactions between investors in the art market, art dealers or auction houses. The three panellists then engaged in a lively Q&A with the audience to discuss alternative methods for the resolution of art-related disputes and the attractiveness of arbitration and mediation in this field.

Submitted by Asoid Garcia-Marquez, ArbitralWomen member, Advisor on legal affairs and governing bodies at UNESCO, Paris, France, and Julie Spinelli, ArbitralWomen member, Partner at Le 16 Law, Paris, France

XII ABA Conference on the Resolution of CIS-Related Business Disputes, jointly organised by the American Bar Association (ABA) and the Russian Arbitration Association (RAA), on 17 September 2020, by Webinar

On 17 September 2020, ArbitralWomen member **Sabina Sacco** (partner, Lévy Kaufmann-Kohler, Geneva), **Elina Mereminskaya** (partner, Wagemann Lawyers & Engineers, Santiago) and **Shelby Grubbs** (Principal, Grubbs ADR, Atlanta) participated in the XII ABA Conference on the Resolution of CIS-Related Business Disputes. The topic of the conference session was ‘Arbitrability: Who decides what is and is not arbitrable – judges or arbitrators?’

The panellists opened the discussion with introducing the notions of jurisdiction, admissibility and arbitrability. They went on to analyse two main approaches to arbitrability from a comparative

perspective. Under the first approach, widely followed in Europe, Russia and Latin America, a dispute is not arbitrable when there is a legal prohibition to submit this type of dispute to arbitration (objective arbitrability).

By contrast, under the second approach, adopted in the US, arbitrability is understood in a much broader sense. Challenges to arbitrability in the US may be based on:

1. legal prohibitions (e.g., a dispute is not arbitrable as a matter of law);
2. challenges to contract formation (e.g., the respondent is not a party to the arbitration agreement);
3. challenges to enforceability (e.g., the clause is unenforceable due to unconscionability);
4. challenges based on the scope of the arbitration agreement (e.g., the dispute falls outside of its scope);
5. challenges based on procedural prerequisites (e.g., the dispute is time-barred);
6. challenges based on public policy.

Bearing in mind this terminological distinction, the speakers focussed specifically on the limits to objective arbitrability. They noted that broad recognition of the right to arbitrate is the rule in many jurisdictions. However,



Left to right: Elina Mereminskaya, Sabina Sacco and Shelby Grubbs

the scope of arbitrability varies from country to country. Many states have enacted carve-outs for disputes involving bankruptcy/insolvency, competition/antitrust, corporate, consumer, employment, family, labour and real estate law.

Finally, the participants turned to the question of who decides the issues of arbitrability: judges or arbitrators? It was common ground that, in principle, arbitrators should enjoy sufficient freedom to decide on arbitrability. In

turn, domestic courts should have the opportunity to review issues of arbitrability at the stages of enforcement or annulment. A balanced approach that allocates functions to both arbitrators and judges ensures the efficiency of the arbitration system.

Due to the high level of discussion, it was later reproduced before the Atlanta Law Arbitration Society (AtIAS). On 15 October 2020, the same panel of speakers was invited to broaden the

analysis before the AtIAS membership and to discuss the conceptual differentiations among themselves and with the audience.



A recording of this webinar is available here.

Submitted by Vera Bykova, MIDS LL.M., International Arbitration Trainee, Lévy Kaufmann-Kohler, Geneva, Switzerland

UNCITRAL Working Group II 72nd session, from 21 to 25 September 2020 in Vienna and remotely

From 21 to 25 September 2020, the United Nations Commission on International Trade Law (UNCITRAL) Working Group II ('WG II') held its seventy-second (72nd) session in Vienna (Austria) and remotely

This was the first session of WG II since the beginning of the pandemic. In line with the procedure for taking decisions of UNCITRAL during the coronavirus disease 2019 (Covid-19) pandemic, delegates of Member States and observers were able to attend in person and remotely *via* the Interpretary platform (Remote Simultaneous Interpretation Platform). ArbitralWomen was represented by three members who attended the session remotely: **Louise Barrington** (ArbitralWomen Co-founder), **Affef**

Ben Mansour (ArbitralWomen Board Member) and **Chika Anyichie** (ArbitralWomen member).

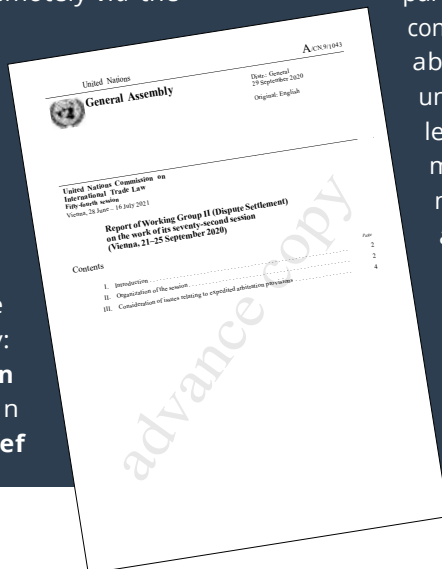
Since its sixty-ninth (69th) session in New York (4–8 February 2019), the WG II is dedicated to issues related to expedited arbitration, in accordance with the mandate it received from the UNCITRAL Commission during its fifty-first (51st) session in 2018. Indeed, in recent years, many arbitral institutions have focussed on expedited arbitration procedures, in

part as a response to concerns among users about rising costs, undue formality and lengthier timelines, making arbitration more burdensome and too similar to litigation. As a response to the call for a common international expedited procedure framework,

the Commission decided to entrust the WG II with the mandate of taking up issues on expedited arbitration.

During its 69th session in 2019, the WG II had a preliminary discussion on the scope of its work, characteristics of expedited arbitration, and the possible form of the work. The WG II decided to begin with the preparation of a set of rules on expedited arbitration. It was also noted that rules on expedited arbitration should have a linkage to the UNCITRAL Arbitration Rules to provide sound alternatives as well as flexibility to the parties. Accordingly, the Secretariat was tasked with the preparation of draft texts on expedited arbitration and the provision of relevant information based on the deliberations and decisions of the WG II at its sixty-ninth (69th) session.

At the seventieth (70th) and seventy-first (71st) sessions, the WG II considered the 'Draft provisions on expedited arbitration' prepared by the Secretariat, contained in document [A/CN.9/WG.II/WP.209](#) and



documents [A/CN.9/WG.II/WP.212](#) and [A/CN.9/WG.II/WP.212/Add.1](#).

At the end of the 71st session, the Secretariat was entrusted with two missions:

1. Preparing a revised draft of the expedited arbitration provisions as they would appear as an appendix to the UNCITRAL Arbitration Rules.
2. Addressing the interaction between the expedited arbitration provisions and the UNCITRAL Arbitration Rules and providing an overview of the different time frames that would be applicable in expedited arbitration.

At the 72nd session, the WG II considered the provisions of the Draft provision on expedited arbitration prepared by the Secretariat. Several other documents were available to the attendees:

- A revised draft of the Draft provisions on expedited arbitration prepared by the Secretariat: [A/CN.9/WG.II/WP.214](#) and [A/CN.9/WG.II/WP.214/Add.1](#) and three written submissions from:
 - [Switzerland](#)
 - [Mexico](#) and
 - the [Miami International Arbitration Society](#)

Without prejudice to the final decision on the final presentation of the expedited arbitration rules, it was decided to consider said rules as an

appendix to the UNCITRAL Arbitration Rules and to postpone the discussion on the form and presentation of the rules to a later stage of the WG II's deliberations.

During this session, the WG II's attendees were able to consider draft provisions 1 to 16 of the Draft provisions on expedited arbitration. Draft provisions 1 (Scope of Application) and 3(1) (Agreement of the parties on non-application of the Expedited Arbitration Rules) were approved, unchanged. Draft provisions 3(4), 4, 5, 6, 7, 8, 12, 13 were approved in substance and the WG II agreed to consider a revised draft of provisions 2, 3(2), 3(3), 9(2), 14, 15. Further, the WG II agreed to replace draft provision 10 (the discretion of the arbitral tribunal with regard to time frames) with a simplified wording and to add wording allowing the tribunal to extend or abridge any period of time agreed by the parties. Draft provision 11 on hearings was much discussed, in particular regarding the use of technology to streamline the process and to save cost and time. The Covid-19 pandemic obviously impacted the debate. Ultimately, there was a general support for providing a general rule on the possibility for arbitral tribunals to use different means of communications during the proceedings and to make use of virtual or remote hearings, including in non-expedited arbitration. With respect to draft provisions 17 and 18, delegates were invited to provide

written comments as well as on other provisions for the next session.

Interrelation between WG II and Working Group III ('WG III') — At a different stage of the discussion, delegates considered the expedited arbitration rules applicable to investment arbitration, in particular with respect to the application of the [UNCITRAL Rules on Transparency in Treaty-based Investment Arbitration](#). Ultimately, WG II agreed to inform WG III (ISDS reform) of the progress made so far after its seventy-third (73rd) session in July 2021.

Calendar — The next session will be held in New York City from 8 to 12 February 2021. Meanwhile, the Secretariat is to prepare a revised version of the draft provisions on expedited arbitration; draft texts that could be included in a guidance document to the future expedited arbitration rules and to prepare a model arbitration clause for expedited arbitration.



WG II's formal report on the session is available here



ArbitralWomen report on the 71st session of WG II

Submitted by Affef Ben Mansour, ArbitralWomen Board Member, Independent Counsel and Arbitrator, Paris, France and Chika Anyichie, ArbitralWomen member, Independent Arbitrator, Seattle, Washington, USA

Efficiency and Innovation in Arbitration for International Construction Projects: A Comparative View Covering the US and Beyond, on 22 September 2020, by Webinar

On 22 September 2020, ArbitralWomen Board Member **Rekha Rangachari** moderated an interactive session hosted by the New York International Arbitration Centre (NYIAC) and

the American Arbitration Association (AAA) on the subject of efficiency and innovation in arbitration in the United States and beyond. The webinar was a comparative law session looking at the

US domestic and international arbitration markets. Rekha was joined by a panel of leading international arbitration practitioners and professionals including **Clea Bigelow-Nuttall** (ArbitralWomen



Top to bottom, left to right: Rekha Rangachari, Luis M. Martinez, Loukas Mistelis, Rafael Carmona, Jason Hambury and Clea Bigelow-Nuttall.

member), **Jason Hambury**, **Luis M. Martinez** and Professor **Loukas Mistelis**.

The panellists discussed [Pinsent Masons' 2019 International Arbitration Survey](#) (the Survey), in partnership with QMUL, that considered how the process of resolving disputes for parties involved in international construction projects could be made more efficient. The Survey served as an anchor for the webinar that offered insights from the perspective of arbitration stakeholders, and various actors from within the dispute resolution community including arbitrators, counsel, and institutional specialists.

Jason Hambury summarised the Survey's findings, which confirmed that arbitration is still perceived by users as the best available forum for resolving disputes in international construction projects. Equally, the need for improved efficiency was raised as arbitration is often considered to take longer and cost more than it should (even in very large value cases). Jason highlighted the shift in landscape since the Survey was first published, as a consequence of the Covid-19 pandemic, which has had a significant impact on how arbitration is used and conducted.

The remainder of the webinar considered some of these changes by reference to the topics that were covered in the Survey. Clea discussed the impact of Covid-19 on construction disputes from an industry perspective, observing a general uptake in commercial arbitrations and the potential for an increase in investment treaty arbitrations. Before the pandemic struck, late performance, poor contract management and poor contract drafting were the three most common causes of international construction disputes as identified in the Survey. This was contrasted with issues faced by parties due to pandemic-related disruptions, leading to a considerable refocusing across the industry in terms of reduction of capital expenditure and managing cash flow particularly carefully. Clea raised the potential for investors

within the construction and infrastructure sector to consider an array of claims against host states under BITs / applicable treaties, as a result of actions or restrictions taken by states in response to the pandemic.

On the topic of embracing technology, Jason explained that at the beginning of the year, prior to the pandemic, there remained a strong view that technology was adding to, rather than improving, the perceived inefficiencies of the arbitral process. Since then, attitudes and practices around technology and remote hearings have been rapidly changing, with paper-free on-line hearings becoming the norm. Jason also recognised and applauded the flexibility and optionality offered by most of the major international arbitration institutions whose rules contain provisions which allow parties to conduct hearings remotely.

Luis Martinez described the commendable response of institutions to the pandemic particularly with reference to the impressive approach taken by the AAA-ICDR as administrators of thousands of domestic US and international disputes. Luis detailed some of the greatest challenges overcome by the AAA-ICDR, including the transition of their 500-strong staff to remote working without compromising on confidentiality, cyber security or data protection considerations.

Professor Loukas Mistelis offered an interesting insight from an arbitrator's perspective on the impetus towards tighter procedure, more efficiency, and approach to volume and use of documents. He also discussed the tribunal's 'boldness' as a factor in efficiency, with a more 'managerial' style expected/required when dealing with applications for interim measures and in striking out frivolous claims, costs orders and dealing with dilatory tactics. Prof. Mistelis further considered the intersectionality of tribunals working with arbitral institutions in supporting that boldness and to effect change.



Submitted by Scheherazade Dubash, ArbitralWomen member, Senior Practice Development Lawyer, Pinsent Masons, London, UK

‘Push for Parity: Practical Tools for Emerging Arbitrators’: ‘Getting your First Appointment – Insights from Practitioners’, on 23 September 2020, by Webinar

On 23 September 2020, ArbitralWomen Board Member and ERA Pledge Young Practitioners Subcommittee (YPSC) member, **Elizabeth Chan**, and ArbitralWomen member and ERA Pledge YPSC member, **Caroline Croft**, hosted the first of the ‘Push for Parity’ webinar series organised by the ERA Pledge YPSC, with support from Young ArbitralWomen Practitioners (YAWP).

The speakers were: **Delphine Ho**, Registrar at the Singapore International Arbitration Centre (SIAC); **Madeline Kimei**, Founder and Principal Director of iResolve and President of the Tanzania Institute of Arbitrators (TIARB); Dr **Gabriele Ruscalla**, Counsel at the ICC International Court of Arbitration (ICC Court); and **Wing Shek**, Senior Counsel at the London Court of

International Arbitration (LCIA).

Elizabeth introduced the newly-established ERA Pledge YPSC, a committee of 33 representatives whose goal is to raise awareness of the ERA Pledge among their peers. She explained that the goal of the ‘Push for Parity’ series was to support those seeking to build a career as an arbitrator.

Moderated by Caroline, the panel focussed on tips for securing one’s first arbitrator appointment:

- a. In terms of institutions’ role in proposing and nominating arbitrators:
 - Gabriele explained that the ICC Court Secretariat is often asked to produce lists of potential arbitrators for either the ICC Court or for the parties to choose from. He pointed out that the ICC makes every effort to ensure that at least half the

candidates on the list are women.

- Delphine remarked that, with increased party sophistication, the SIAC is not frequently called on to propose arbitrators.
- Madeline noted that the TIARB nominates arbitrators from a list shortlisted by the parties (who in turn can draw on a list of 39 panel members provided to them by the TIARB).
- Wing noted that case holders provide the LCIA with a list of candidates selected from the LCIA’s internal database. She highlighted that the LCIA has an internal policy to include women on the list and is also mindful to limit repeat appointments.
- b. In terms of joining institutions’ panels of arbitrators:
 - Wing noted that the LCIA accepts arbitrator forms from candidates, which are fed into the LCIA’s database. She emphasised that it was crucial to keep the database up-to-date by regularly providing new information.
 - Since the ICC Court does not have a roster of arbitrators, Gabriele advised aspiring arbitrators to either approach their National Committee or the ICC Court Secretariat directly.
 - The SIAC maintains both a publicly open panel and an unpublished reserve panel. Delphine noted that the reserve panel is an appropriate first panel for aspiring arbitrators to join. However, since the SIAC is not limited to appointing from its arbitrator panels, staying on the SIAC’s radar is essential.
 - Madeline added that the TIARB requires aspiring arbitrators to be part of the institution’s roster before they may be proposed as arbitrator candidates.



Top to bottom, left to right: Caroline Croft, Madeline Kimei, Wing Shek, Delphine Ho, Gabriele Ruscalla and Elizabeth Chan

c. In terms of advice on building one's profile to secure a first appointment:

- Wing recommended gaining counsel experience and emphasising industry-focussed experience.
- Madeline added that arbitrator hopefuls should structure their CVs appropriately and also encour-

aged participation in webinars and seminars.

- Gabriele emphasised the usefulness of getting experience as tribunal secretary.
- Delphine observed that the SIAC Secretariat takes note of practitioners' interactions with the SIAC.


As parting advice, the panellists consider patience, perseverance, creativity and innovation to be crucial.

Submitted by Arundathi Venkataraman, International Dispute Resolution Lawyer, Young ICCA Scholar, University of Miami (2019)

The European Circuit of the Bar's Annual Conference Second Session on 'Virtual Hearings – The European Perspective', on 23 September 2020, by Webinar



Top to bottom, left to right: David Barnville, Richard Pearce, Paul McGarry, Abigail Holt, Colin Briss, Maria Hauser-Morel

The European Circuit , a voluntary organisation of lawyers practising as members of bars and law societies in Europe, held its 2020 Annual Conference remotely. Acknowledging the challenges faced by the legal profession due to the Covid-19 pandemic, the second session was dedicated to the topic of remote hearings.

The session was moderated by HHJ **Richard Pearce**, Judge of the Circuit Commercial Court (Manchester, UK). Justice **David Barnville** and Sir **Colin Briss** presented the experience of Irish and English courts, respectively. **Paul McGarry SC**, senior advocate at the Bar of Ireland, spoke about his experience as party counsel before the Irish courts, as well as the CJEU, and Dr **Maria Hauser-Morel**, counsel at the Paris office of HANEFELD, offered the perspective on

international arbitration.

The panellists compared their personal experience in remote hearings since the start of the pandemic. Overall, the transition to virtual hearings was facilitated by previous experience with virtual hearings. For instance, the Irish court system had limited familiarity with remote hearings, but it made considerable efforts in this regard by, for example, developing a customised video-streaming application, in order to adapt to the new conditions. In contrast, the High Court of England & Wales has used technology for decades by conducting hybrid hearings. Hence, switching to entirely remote hearings by falling back on established software was not difficult for it. Likewise, in international arbitration, remote hearings have been commonly used for years, although not to the extent they are today.

Even though the use of virtual hearings was seen as a positive thing by the panellists, they also addressed certain concerns, e.g., the suitability of remote hearings for cases involving extensive witness examinations, such as complex criminal cases. Moreover, concerns have been raised as to the public nature of judicial proceedings. The English High Court mitigated such concerns by providing the press with a link to a remote hearing upon request. In Ireland, live streaming of hearings has been contemplated. In international arbitration, objections against remote hearings are dealt with on a case-by-case basis, depending on the consequences of the pandemic for each participant, the risks that the award would not be enforceable, the nature and length of the hearing and

the complexity of the case. In addition, the panellists agreed that, in order to mitigate concerns, protocols for remote hearings have proven useful, although it is not necessary to have a tailor-made protocol for each individual case. Such protocols, though of varying detail, have been put in place by English and

Irish courts. Similarly, several template protocols and checklists have been published by different arbitral institutions.

As regards the future, although the return to physical sessions is desired among judges as well as arbitration practitioners, the panellists agreed that there will be a more permanent place

for remote hearings after the pandemic.

Submitted by Maria Hauser-Morel, ArbitralWomen member, counsel, HANEFELD, Paris, France and Viktoria Schneider, ArbitralWomen member, associate, HANEFELD, Hamburg, Germany

The Future of Mediation: The Singapore Convention, on 23 September 2020, by Webinar



On 23 September 2020, the International Mediation Institute (IMI) hosted a webinar to cele-

brate that the United Nations Convention on International Settlement Agreements resulting from Mediation, also known as the Singapore Convention, entered into force on 12 September 2020. ArbitralWomen member **Ana Sambold** provided a comprehensive analysis of the treaty, in Spanish, and explained how it will complement the existing global system of dispute resolution alongside the New York Convention and the Hague Convention.

When there is trade and commerce, disputes will inevitably arise. As Singapore's Prime Minister Lee Hsien Loo aptly observed during the signing ceremony of the Singapore Convention, disputes 'disrupt normal business operations. They damage reputations, hurt share prices and

make it harder for companies to raise capital. A robust framework to manage such conflicts can prevent such disputes from escalating unnecessarily or causing unintended consequences'. The Singapore Convention will establish a much-needed international framework to manage such conflicts and prevent them from escalating through mediation and other alternatives of dispute resolution.



Click to watch the recording of the webinar in Spanish

Submitted by Ana Sambold, ArbitralWomen member, Arbitrator, Sambold Law & ADR Services, San Diego, California, USA

Cross-Examination 101, on 24 September 2020, by Webinar

On 24 September 2020, Young ICCA in partnership with the Serbian Arbitration Association's Under 40 Section hosted 'Cross-Examination 101', a webinar aimed at discussing the ways younger members of arbitration teams can contribute to the effective cross-examination of fact witnesses. ArbitralWomen member **Clea Bigelow-Nuttall** of Pinsent Masons (London, UK) joined **Milica Savić** (Karanovic Partners, Belgrade, Serbia) and **Benjamin Lissner** (CMS Law, Cologne, Germany) to give first-hand insight and experience of effective

questioning techniques, strategies for adjusting to uncooperative witnesses, and ways that younger team members can contribute value in preparing lead counsel for cross-examinations. A broad audience of Young ICCA members from across numerous jurisdictions raised questions to the panellists on the topics of dealing with dishonest witnesses, dismantling witness credibility, the challenges of cross-examination during remote hearings, and taking the step to one's first cross-examination experience. The panel discussion was followed by a mock cross-examination

in which Clea and Milica scratched their 'thwarted actor' itch by playing the roles of counsel and witness, respectively, demonstrating the good, the bad and the downright ugly of cross-examination techniques under the benevolent regard of Benjamin as sole arbitrator.

For more on Young ICCA's webinar series and the programme of upcoming events, click [here](#).

Submitted by Clea Bigelow-Nuttall, ArbitralWomen member, Senior Associate, Pinsent Masons, London, UK

Canada Arbitration Week – YCAP Symposium with ICC YAF: ‘Is the Future of Arbitration Made of Virtual Insanity?’, on 24 September 2020, by Webinar



Left to right: Annie Lespérance, Sandra Lange, Christina Doria

On 24 September 2020, the Young Canadian Arbitration Practitioners (YCAP) hosted its Fall Symposium in conjunction with the International Chamber of Commerce Young Arbitrators Forum (ICC YAF), as part of Canada Arbitration Week (CanArbWeek). The session featured a lively debate over the impact of technology on the future of international arbitration between two teams: Team Red consisted of **Sandra Lange** (Associate, McCarthy Tetrault) and **Hugh Meighen** (Partner, BLG), while **Christina Doria** (Associate, Baker McKenzie) and **Annie Lespérance** (ArbitalWomen member, Associate Investment Manager, Omni Bridgeway) formed Team Blue. **Martin Doe** (Senior Legal Counsel, Permanent Court of Arbitration) moderated the debate, and the audience served as judges.

Proposition #1: ‘Electronic arbitration, from documents to hearings, should be the default in arbitration’

Team Red argued in favour of

this proposition by highlighting the substantive and procedural benefits of a virtual forum. Sandra Lange remarked that electronic arbitrations could yield better evidence, as shy witnesses may feel more comfortable testifying behind a computer screen. Furthermore, virtual hearings provide greater access to justice: instead of having to travel to a physical place of arbitration, parties simply need to log onto a secured platform. Hugh Meighen noted that less travel will also lead to cost savings, thereby making arbitration an even more attractive dispute resolution method.

However, for Team Blue, the risks of electronic arbitration outweigh the benefits. Christina Doria explained that due process could be easily impeded by technical difficulties, unequal access to necessary equipment, and time zone conflicts. Moreover, there are a series of unresolved ethical and cybersecurity issues in the virtual realm. Annie Lespérance added that prevailing parties may not be able to enforce awards, as many arbitration agreements and international rules do not recognise

the legitimacy of virtual hearings.

Turning it over to the audience for their vote, Team Red won with a razor-thin margin of 51% in favour of virtual hearings.

Proposition #2: ‘The success of international arbitration relies on our ability to travel and meet in person’

Annie Lespérance led the charge for Team Blue by stating that virtual events cannot replace the value of real human interactions. This is because in-person meetings offer more unique opportunities to network and exchange ideas, for example, over lunch or a cab ride. Christina Doria noted that the international arbitration community risks an erosion in collegiality if it continues to exclusively host virtual events. After all, virtual breakout rooms can only facilitate so much conversation!

Hugh Meighen pushed back on behalf of Team Red. He pointed out that the success of the international arbitration community is not predicated on the ability to enjoy cocktails, but rather the ability to develop international norms for dispute resolution. This can be done equally well through virtual platforms. In addition, Sandra Lange argued that virtual gatherings encourage diversity and inclusion.

Martin Doe asked the viewers for their votes – in an exciting turn of events, Team Blue won with 52% in favour of in-person gatherings.



Left to right: Hugh Meighen, Martin Doe

Overall, while ‘sweatpants arbitration’ may soon overtake in-person dispute resolution out of practical necessity, it appears the international

arbitration community is more than happy to meet for conferences and events. For a full summary of this CanArbWeek session, visit [this page](#).

Submitted by Christina Tang, Student Editor, Canadian Journal of Commercial Arbitration, Queen’s Faculty of Law, Kingston, Canada

Canada Arbitration Week – ICC–ArbitralWomen Session on Virtual Hearings: ‘The Good, The Bad & The Unknown’, on 25 September 2020, by Webinar

On 25 September 2020, as part of the Canada Arbitration Week, ArbitralWomen and the ICC International Court of Arbitration (ICC Court) held a panel on virtual hearings titled ‘The Good, the Bad and the Unknown’.

The panel offered a forum for an informative and constructive discussion on holding virtual hearings during the pandemic and beyond. The event was moderated by ArbitralWomen’s Co-founder **Louise Barrington** and included panellists **Sandra González** (ArbitralWomen member, Head of Dispute Resolution with Ferrere in Latin America and alternate member of the ICC Court for Uruguay); **John Judge** (counsel and international arbitrator); **Yasmine Lahlou**, (ArbitralWomen Board Member, partner with Chaffetz Lindsay in New York, US) and **Alexis Mourre** (President of the ICC Court, scholar and arbitrator).

The discussion started with opening remarks by Louise Barrington, who referred to the challenges the arbitral community is facing due to the Covid-19 pandemic and specifically to the now-extended practice of holding virtual hearings. She kicked off the discussion asking the panellists their views on the key factors in adopting a virtual hearing. Sandra González commented that while before the pandemic only procedure or interlocutory conferences were virtual, now what is virtual is ‘the’ hearing, i.e., the moment in which all participants get together for the presentation of oral arguments and testimony.

Against this backdrop, Yasmine Lahlou mentioned that, in considering virtual hearings, not only efficiency and speed are important. She highlighted the relevance of a leveled playing field and



Photo caption: Top to bottom, left to right: Louise Barrington, John Judge, Yasmine Lahlou, Alexis Mourre, Sandra González

how arbitrators and parties can take it into account in deciding, and carrying out, a virtual hearing. She addressed the effects of parties’ potentially different access to IT resources and bandwidth.

Alexis Mourre and John Judge addressed the role applicable rules and/or laws may play in the decision to have a virtual hearing. Alexis Mourre discussed the implications of Article 25(2) of the ICC Arbitration Rules and highlighted arbitrators’ duty to actually resolve a case as a guiding principle. John Judge explained Canadian law’s prescriptions and how the applicable law of the seat of the arbitration may (or may not) affect the enforceability of an award when a party objects to a virtual hearing, which was the scenario discussed by both panellists.

The panel then turned to the question of how the use of proper technology and preparation could be key to holding a virtual hearing. As to technology, Yasmine Lahlou and John Judge mentioned that several platforms and IT companies are available to manage all aspects of a virtual hearing, including confidentiality issues, virtual breakout rooms and document accessibility during the hearing. Sandra González opined that aspects such as numbering

protocols are normally well resolved by IT vendors and already existing protocols. On this matter, Alexis Mourre highlighted that several bodies have issued protocols to help parties, counsel and arbitrators to deal more easily with the challenges of virtual, expanding on the ICC’s protocol issued in response to arbitration cases moving online due to the lockdowns and travel restrictions.

All the panellists then shared with the audience their own experiences about virtual hearings etiquette and offered tips, from muting microphones to how to handle interruptions in the middle of a party’s allotted time.

In the end, all the panellists and the moderator agreed that virtual hearings are here to stay, at least to some degree, regardless of whether the pandemic goes away or not. Arbitration practitioners have now experienced—albeit unwillingly—virtual hearings, their strengths and weaknesses, and are equally more adept at tackling the latter and ready to recognise its cost saving aspect.

Submitted by Sandra González, ArbitralWomen member, Partner, Ferrere, Montevideo, Uruguay

Regards croisés d'arbitres (Diverse Arbitrator Perspectives), on 1 October 2020, by Webinar

On 1 October 2020, Freshfields Bruckhaus Deringer hosted a webinar, bringing together an array of prominent women arbitrators to discuss topical issues in international arbitration. The panellists were **Marie-Laure Bizeau**, and ArbitralWomen members **Caroline Duclercq**, **Laurence Kiffer**, **Christine Lécuyer-Thieffry** and **Patricia Peterson**. The event was introduced by **Peter Turner** and was moderated by **Gisèle Stephens-Chu** (ArbitralWomen Board Member) and **Vasuda Sinha**.

Over the course of an hour and a half, the panellists considered key procedural and substantive issues.

With respect to procedure, they considered the imperatives of procedural efficiency: would virtual hearings find a more prominent place in arbitral practice, and how should parties and tribunals approach evidentiary issues relating to document production and arising from fact and expert witnesses? They also discussed



Top to bottom, left to right: Vasuda Sinha, Gisèle Stephens-Chu, Patricia Peterson, Marie-Laure Bizeau, Laurence Kiffer, Christine Lécuyer-Thieffry, Peter Turner and Caroline Duclercq

the proper role of the arbitrator in managing arbitrations and developments regarding an arbitrator's duty of disclosure.

In relation to substantive issues, the panellists covered an equally wide array of topics. They spoke of their experiences with a variety of parallel procedures and how they can affect arbitral proceedings. They considered how issues of corruption and illegality

might factor into an arbitration and the arbitrator's role in managing them. The panellists also tackled the hot button issue of the different approaches of the French and English courts in determining and applying the law applicable to an arbitration agreement.

Submitted by Vasuda Sinha, Senior Associate, Freshfields Bruckhaus Deringer, Paris, France

Rising Arbitrators Initiative Launch Conference, on 1 October 2020, by Webinar

Opening the Rising Arbitrators

Initiative launch conference on 'Dealing With Public Policy And Due Process Concerns As Rising Arbitrators', **Yves Derains**, Founding Partner, Derains & Gharavi, Paris, spoke, in his keynote address, about the 'Interfaces Between Public Policy and *Iura Novit Curia*'. He began by analysing the concept of public policy, at national and international level. He also addressed the issue of applicable law and highlighted that, unlike national judges, arbitrators, who have no *lex fori*, are in a more difficult situation in the absence of a choice by the parties. Referring specifically to *iura novit curia*, Yves Derains explained that this is a slightly artificial concept, as 'judges do not know

the law but have general knowledge of the law, let alone of a foreign law'. When dealing with the interface between public policy and *iura novit curia*, Yves Derains specified that arbitrators are not in the same position as national judges. He then highlighted specific problematic situations, such as when a specific law is applicable, but a party does not refer to a given principle of public policy; or when the parties have chosen a law but have decided to contract out of a rule of public policy under that law, and none of the parties brings this up. To conclude, Yves Derains explained that arbitrators are not guardians of any national legal system, but that they must take into account in their award public policy rules

not raised by the parties when there is a risk of non-enforcement of the award or of a breach of truly international public policy. In that case they must raise them *sua sponte* and allow the parties to discuss them.

After Yves Derains' keynote address, the first panel of the conference addressed 'Due Process Challenges on the Horizon?' and was moderated by **Paul Tan**, Partner & Head of Litigation for Southeast Asia at Cavenagh Law LLP (Clifford Chance Asia). **Crina Baltag**, Senior Lecturer in International Arbitration at Stockholm University, laid the ground for the panel's discussion, addressing the meaning of 'due process' and of 'due process paranoia'

and highlighting recurring situations which usually sit in a 'grey area' and require arbitrators to achieve balance between the respect of a party's right to due process and the mandate to avoid any potential abuse of process by the other party. Crina referred to deadline extensions, submissions or evidence put forward after the cut-off date, last minute reschedule of the hearing and new claims, where courts, in general, when dealing with a challenge of the validity of the award or of its enforceability, respected the tribunals' powers as case managers and only sanctioned obvious situations of breach of due process. **Sara Koleilat Aranjó**, Senior Associate, Al Tamimi & Co, Dubai, UAE, addressed due process concerns in challenging jurisdiction. Sara underscored that 'due process' is a mouldable notion based on the idea of fairness, which can be credited for the increasing popularity of international arbitration. However, when discussing 'due process', Sara added, one must take into consideration cultural differences which might shape this notion in specific jurisdictions. One aspect of this is a party's representation in international arbitration and the role of legal counsel, in particular in the light of the multiple possible laws and rules applicable to the latter: the law of counsel's home jurisdiction, the law of the seat, the law of the venue of the hearings, etc. This issue is directly relevant to one aspect of 'due process', which is the opportunity to present the case. **Isabelle Michou**, Partner, Quinn Emanuel Urquhart & Sullivan, LLP, Paris, France, addressed the current challenges to due process in the context of the Covid-19 pandemic. Isabelle focussed on the situations in which a party uses the excuse of the pandemic to disrupt the proceedings. Another aspect put forward for discussion was the concern with the equality of arms of the parties in the context of the pandemic. Isabelle highlighted that arbitrators should grant additional time to a party when this is reasonable and that they should make sure that parties have fair access to technology.

The second session featured a keynote address by **Carolyn Lamm**, Partner, White & Case, Washington D.C., US, who addressed a range of issues that may

give rise to due process challenges in arbitration, including unequal procedural schedules, bad faith tactics by parties, and the selection of witnesses for cross-examinations. Carolyn advised young arbitrators to be 'active guardians' of due process and noted that, while due process is essential to the system of international arbitration, arbitrators should assert control over proceedings. In particular, she advised young arbitrators to take active measures to ensure that the full record of the case is developed, in order that key issues are disseminated and commented upon by the parties.

Following the keynote address was a panel titled 'Revisiting *Iura Novit Curia* and Public Policy', moderated by **Andrea Carlevaris** (Partner, BonelliErede, Rome, Italy) and consisting of **Flavia Mange** (Mange & Gabbay, São Paulo, Brazil), **Montserrat Manzano** (Partner, Von Wobeser y Sierra, Mexico City, Mexico) and **Tai-Heng Cheng** (Global Co-Head, International Arbitration & Trade, Sidley Austin, New York City, USA). Flavia Mange offered a detailed discussion of the US Court of Appeal for the second circuit's judgment in [VRG v Matlinpatterson](#) and related annulment and recognition and enforcement proceedings in Brazil and the Cayman Islands, respectively. In her analysis, she focussed on the issue of which law governs the question of the applicability, or not, of *iura novit curia*; and, in that same manner, she pondered whether *iura novit curia* might be considered a transnational principle. She advised that young arbitrators should

seek to establish, at an early stage of the arbitral proceedings, the manner in which the parties and arbitrators shall deal with the relevant issues and evidence. In fact, this, according to Andrea Carlevaris, has become an increasingly common practice in arbitral proceedings, with a view to avoiding any risk that the parties may be surprised by the contents of the final award. Montserrat Manzano turned to the practical matter of challenges to arbitral awards, considering whether the reliance upon legal grounds not petitioned or dealt with by the parties might lead to the annulment or non-recognition and enforcement of the award. She focussed on the issues of *ultra petita*, foreseeability and due process as limits to the arbitrator's discretion to ascertain the contents of the applicable law, dealing with the positions of the courts of many of the most used arbitral seats. She observed that what is demanded of arbitrators is a balance of obligations: the arbitrator must not only apply the law correctly, but they must do so in a manner that does not surprise the parties. An optimal system, she suggests, is one that seeks a balance between an inquisitorial and an adversarial approach, when ascertaining the applicable legal issues. In addition to echoing the thoughts of Carolyn and Flavia, Montserrat suggested that soft law materials, such as Article 7 of the [Prague Rules](#) and the [ILA Recommendations on Ascertaining the Contents of the Applicable Law](#) are useful materials for rising arbitrators



Top to bottom, left to right: Rocio Digon, Montserrat Manzano, Carolyn Lamm, Flavia Mange, Andrea Carlevaris, Tai-Heng Cheng

to consider. Tai-Heng Cheng addressed the issue of *iura novit curia* from his perspective as an arbitrator, dealing with the matter of how to raise legal issues without appearing to prejudge the case or appearing biased. He stated that the minimum standard expected of any arbitrator is to ensure that his or her award is enforceable. However, that alone is unsatisfactory if the award is not also well reasoned. This is so because international arbitrators have an essential role in international commerce, and they perform an important public policy function. On a practical level, he suggests that arbitrators should ensure that, by the time the hearing takes place, they already have in mind the key issues that require decision, the law(s) that informs such issues, and what the gaps in their

own knowledge of that/those law(s) are, if any. During the hearing itself, he suggests that arbitrators on a three-person tribunal might, where possible, seek to confer about potential questions for the parties. Even if new issues arise as late as after the post-hearing brief stage, Tai suggests that the balance between efficiency and fairness should tilt towards the latter, and that, consequently, parties must be invited to comment on such issues. Andrea suggested in this respect that, often, where such issues arise late in the proceedings, it is a consequence of the arbitrators not being sufficiently proactive in studying and ascertaining the relevant issues. In sum, the panel was clear in its consensus on the importance of parties having the chance to comment upon any legal issue that the

tribunal considers relevant to the dispute. It is patently unsatisfactory either for an award to be poorly reasoned but enforceable, or for an award to be well and proactively reasoned but at the expense of the parties' right to due process. The panellists agreed upon the need for arbitrators to be proactive in establishing the parties' expectations and in studying the issues of their disputes from an early stage.

Submitted by Crina Baltag, ArbitralWomen member, Arbitrator and Senior Lecturer in International Arbitration, Stockholm University, Sweden and Montserrat Manzano, ArbitralWomen member, Partner, Von Wobeser y Sierra, Mexico City, Mexico

Be Inclusive: Opportunities to Take Action for Gender Diversity, 5 October 2020, NYIAC and the ABA Section of Dispute Resolution, by Webinar

The New York International Arbitration Centre (NYIAC) and the American Bar Association Dispute Resolution Section (ABA DRS) presented the first NYIAC Talks Podcast Series: 'Be inclusive: opportunities to take action for gender diversity', held virtually on 5 October 2020.

Rekha Rangachari, who moderated the panel, indicated that the ICCA Cross-Institutional Task Force on Gender Diversity in Arbitral Appointments and Proceedings Report (Report), released at the end of July 2020, captures the diversity of stakeholders in international dispute resolution, but asked the panellists to explain what it is exactly, why now, and why is it different from previous reports.

Mirèze Philippe explained that there have been many publications in the last decade on gender diversity, unconscious bias, pipeline leak reports and gender statistics that have shed light on the dearth of women in lead positions in dispute resolution. This wealth of material was not centralised



and therefore difficult to find, which has been remedied by the comprehensive and thorough Report. The Report shows where lack of diversity exists, provides data and information about initiatives undertaken by various stakeholders to promote female practitioners, analyses barriers impeding diversity, and provides tips and recommendations on opportunities

to promote gender diversity and overcome bias.

Sarah Grimmer said that the Report is a reference point for discussion about ways to identify and start breaking down some of the barriers to move forward. It provides an excellent set of data and information coming from different sources and a snapshot of the situation between 2015 and 2019. The Report contains nine appendices, two of which distil some of the best practices and initiatives, and a checklist for recording data for institutions and identifying opportunities to address diversity. Readers may not find the time to read the whole 150-page Report but can find the most important issues in the checklist at the end of the Report.

Patricia Shaughnessy observed that it was high time to have such a tool. A few practitioners were interviewed and shared their experience about the challenges they faced. Younger entrants into the arbitration community will feel encouraged to

read such testimonies. They will also find a toolkit to help them develop their career. We hope that law firms and users will also be inspired by this broad approach.

Noiana Marigo pointed out that the Report sets out concrete ways to address gender diversity, which is probably the most useful part of the Report. It helps understand the roots of the problem and how to address them, learn about what has worked so far to be able to replicate the solu-

tions. The Report contains resources to help users find qualified female practitioners. Users should look at all potential candidates and see how female candidates compare to male candidates.

Santiago Soria considered that this Report is a must to raise awareness and share data to understand the real picture, and then address the problem by using the recommended tools. He reported about the many programmes put in place by his firm,

which are very inspiring, and which contribute significantly to retaining female lawyers, assisting them in building a career and being visible, and promoting them.

The panel concluded that the Report is an extremely useful toolkit for all communities.

Submitted by Mirèze Philippe, Special Counsel, ICC International Court of Arbitration, ArbitralWomen Co-founder and Board Member, Paris, France

Bridging the Gap: Young Practitioners and Gender Diversity, on 6 October 2020, by Webinar



The Young International

Council for Commercial Arbitration (Young ICCA) organised a panel on 'Bridging the gap: young practitioners and gender diversity' held virtually on 6 October 2020, to present the Cross-Institutional Task Force on Gender Diversity in Arbitral Appointments and Proceedings report (Report) released at end of July 2020. [Click here for the programme and the panellists' bios](#).

Carolyn Lamm, chair of the Task Force (TF), presented a brief overview of the work that led to the Report. The TF analysed the data provided by major arbitral institutions to see the impact of the focus mainly of ArbitralWomen and the ERA Pledge. The data shows an incredible increase in the number of women, although it does not come close to where we need to be, but attention to the issue has grown in the right direction. We still have a long way to go before achieving complete diversity.

The TF examined the causes of lack of diversity, which include unconscious bias, and it proposed opportunities to address diversity.

Jennifer Ivers then explained how data was collected and compared to issue the Report. She also observed that women belong in all places where decisions are being made. It should not be that women are the exception, but, unfortunately, that is still the case. Although they remain low, the numbers have risen in a rather stable way and institutions have done very well overall.

Mirèze Philippe remarked that the Report is an outstanding tool that everyone should have handy, because it contains a wealth of information, data and recommendations. She observed that talents are equally strong for both genders and for all profiles of human beings. Diversity is not only an issue of fairness and human rights: Using all talent contributes to a better performance of companies. Diversity should be part of all business plans. Diversity gives better exposure and attracts more clients, as firms bring the best expertise to serve them. Everyone bears responsibility in cultivating diversity.

Sylvia Noury indicated that her experience was a tale of two decades. During the first decade, she had not noticed that there was not a single female arbitrator. Then she looked at the statistics in investment disputes and

in the London arbitration community, dominated by QCs, and saw how arbitration was in fact male dominated. She realised also that she was doing a disservice to clients by not providing them with a list of the best quality arbitrators, since the female talents were missing. That is when she started the ERA Pledge, to give women more visibility.

Kai-Uwe Karl observed that diversity makes sense and there is no debate about it. It is more fun to work with people who are different from you. It is however a closed market and many people want to keep it as small as possible. There is a lot of protectionism. To get quality and have competition, you need to break the market open. Lawyers are very conservative, whereas companies are more dynamic. Also, it is not difficult today to find talented female arbitrators.

The panel concluded that tools exist which can help all stakeholders think more broadly and use the best talents.

The Young ICCA Steering Committee Co-Chairs are: **Theominique Nottage**, **Panagiotis Chalkias** and **Matthew Morantz**; Events Coordinators: **Ana Coimbra Trigo** and **Shirin Gurdova**; and Task Force Members: **Nicola Peart** and **Jennifer Ivers**.

Submitted by Mirèze Philippe, Special Counsel, ICC International Court of Arbitration, ArbitralWomen Co-founder and Board Member, Paris, France

Conducting Virtual Arbitration Hearings—Skills that Make a Difference, on 7 October 2020, by Webinar

On 7 October 2020, ArbitralWomen hosted a webinar titled 'Conducting Virtual Arbitration Hearings—Skills that Make a Difference', with support from Vietnam Women Lawyers and Friends ('VNWLF'), the Vietnam Academy for Arbitration ('VAA') and Sidley Austin. The event was organised by ArbitralWomen Global Events Co-Director, **Vanina Sucharitkul**.

Opening remarks were given by **Elizabeth Chan** on behalf of ArbitralWomen and **Trinh Nguyen** on behalf of the VAA and VNWLF.

The moderator was **Jennifer Lim**, a Senior Associate at Sidley Austin, Singapore. The speakers were: **Tatiana Polevshchikova**, Deputy Head of Legal Services at the Asian International Arbitration Centre ("AIAC"); **Matthew Hodgson**, Partner at Allen & Overy, Hong Kong; **Nguyen Manh Dzung**, ICC Court Member for Vietnam; and **Juliet Blanch**, Independent Arbitrator at Arbitration Chambers.

On aspects of 'virtual advocacy', Matthew and Juliet emphasised the following points:

- efficiency is crucial in virtual proceedings – 'Zoom fatigue' is real and proceedings should be tailored accordingly (for example, by having plenty of breaks or shorter hearing days, if possible);



Top to bottom, left to right: Jennifer Lim, Trinh Nguyen, Elizabeth Chan, Juliet Blanch, Tatiana Polevshchikova, Matthew Hodgson, and Nguyen Manh Dzung

- empathising with the tribunal remains key; in this regard, it is important to be aware of tribunal members' body language;
 - "classic" advocacy skills, such as being reasonable, courteous, varying your tone or pace, and using demonstratives, can still be highly effective in the virtual context;
 - other techniques are less effective, for example, unnecessarily discrediting witnesses or experts and using exaggerated gestures;
 - having the right set-up is important (for example, investing in a separate microphone, setting up your screens properly, ensuring appropriate lighting, setting your camera at eye-level so you can look straight into it and not the screen, and testing the set-up beforehand);
 - agreeing the dress code beforehand;
 - not overstating 'due process challenges', including, for example, monitoring a witness who is being cross-examined remotely; and
 - parties wishing to resist a virtual hearing will need to prepare a solid argument as to why a virtual hearing should be denied, as virtual hearings are increasingly the norm.
- As regards institutional develop-

ments, Tatiana explained that the increased demand for virtual hearings prompted the AIAC to draft the Virtual Arbitration Proceedings Protocol. This is a non-binding document setting out best practices for conducting virtual hearings. It provides guidance, for example, on issues relating to technological and logistic requirements at the venue, witness examination, hearing etiquette and confidentiality. The AIAC requires both parties and the tribunal to familiarise themselves with the Protocol, but they can deviate from it as long as they notify AIAC beforehand.

Nguyen's presentation focused on the [ICC Guidance Note on Possible Measures Aimed at Mitigating the Effects of the COVID-19 Pandemic and its Annex I](#). This note provides guidance on various matters including the presentation of evidence.

The webinar concluded with a short Q&A session during which the speakers discussed potential disparities between parties in terms of access to technology and the reasons why arbitration users in the Asia-Pacific region might be more reluctant to adopt virtual proceedings.

Submitted by Guillermina Huber, London, United Kingdom.



9 April 2020

ICC Guidance Note on Possible Measures Aimed at Mitigating the Effects of the COVID-19 Pandemic

I - Purpose

1. This note provides guidance to parties, counsel and tribunals on possible measures that may be considered to mitigate the adverse effects of the COVID-19 pandemic on ICC arbitrations (the "Guidance Note"). COVID-19 is a health catastrophe that is massively disrupting the global economy. It will both directly impact pending ICC arbitrations and generate new disputes that may themselves be more difficult to progress due to safety concerns and public health restrictions imposed to limit or slow the virus's spread. However, parties, counsel and tribunals can minimise and perhaps even avoid such disruption and difficulty by thoughtful use of case management tools that are either already available through the ICC Arbitration Rules ("Rules") or by the additional steps the ICC International Court of Arbitration ("Court") is taking to streamline its internal processes.
2. The Court recognises the important role that parties, counsel and tribunals play in ensuring that disputes will continue to be resolved on a fair, expeditious, and cost-effective basis. This Guidance Note (i) recalls the procedural tools available to parties, counsel and tribunals to mitigate the delays generated by the pandemic through greater efficiency, and (ii) provides guidance concerning the organisation of conferences and hearings in light of COVID-19 considerations, including conducting such conferences and hearings by audioconference, videoconference, or other similar means of communication ("Virtual Hearings"). To the extent relevant, it may serve in the context of other ICC ADR proceedings as well.

II - Mitigating COVID-19 related delays

3. The Court remains open for business, continuing to progress pending arbitrations and with its doors open to new cases. Moreover, the Court is fully committed to the fair and efficient resolution of disputes, despite the challenges that the COVID-19 pandemic poses. The pandemic does not change the fundamental principles by which the Court operates, including that, pursuant to Article 23(1) of the Rules, tribunals and parties have the duty "to conduct the arbitration in an expeditious and cost-effective manner". Pursuant to Article 25(1) of the Rules, tribunals have the additional duty to proceed with as short a time as possible to establish the facts of the case by all appropriate means.
4. Consistent with the Rules and these principles, parties, counsel and tribunals have shared obligations to consider procedural measures that can mitigate the effect of delays to the arbitral process, including delays caused by the COVID-19 pandemic. In doing so, they should take into account that certain aspects of the arbitral process should not be materially delayed by the pandemic. For example, in newly introduced cases, tribunals should avoid any delay by consulting the parties on the organisation and timing of the initial case

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Online arbitration hearings: Legal considerations and practical implications – a pandemic pathway to the future, on 7 October 2020, by Webinar

The Cyprus branch of the

Chartered Institute of Arbitrators held a webinar on 7 October 2020 titled 'Online Arbitration Hearings – Legal Considerations and Practical Implications', with Professor **Mohamed Abdel Wahab** as the guest speaker. The webinar, introduced by the Cyprus branch chairman **Nikos Elia** and moderated by Dr **Nadia El Baroudi-Kostrikis**, attracted a considerable international audience. Professor Abdel Wahab's presentation explored how the Covid-19 crisis has not only revolutionised people's mindset regarding the practice of international arbitration but has also catalysed the consideration of potentially significant changes in approaches, strategies and practices.

Professor Abdel Wahab compared the arbitration process to Snowpiercer because, as he said, unlike traditional courts, the 'arbitration train' has not stopped: arbitration adapted quickly, efficiently and managed to thrive during the Covid-19 crisis, despite disruptions resulting from global restrictions on travel and physical proximity. According to him, the field's smooth transition constituted a significant paradigm shift, which he then expounded on in terms of the effect on hearings, the distinct field of ODR (online dispute resolution), the legal considerations attached to online arbitration hearings and finally the ensuing strategic and practical implications.

The pandemic's impact on hearings (audio or video) and the ability of institutions, users and practitioners to swiftly adapt to the challenges of this new mode of working have contributed to catalysing reform. That said, the Covid-19 crisis has given rise to protocols, guidelines, initiatives, projects, books and surveys, which present a wealth of information and resources to support the arbitration community as it navigates this difficult transitional period to a virtual way of practice in the field.

For Professor Abdel Wahab, virtual hearings have certainly brought the arbi-



Nadia El Baroudi-Kostrikis

tration community closer to the digitising of arbitration proceedings, but more work remains to be done. Addressing the legal considerations inherent in online arbitration hearings, he explored three overarching principles: Party autonomy, the perceived unilateral right to a hearing and due process. He went on to elaborate what has become widely referred to as the 'Abdel Wahab Pandemic Pathway'. His four-step analysis distinguishes between four scenarios which arise from the applicable *lex loci arbitri* or the governing procedural rules (including any institutional rules) and whether such a body of rules expressly refers—or not—to the possible use of technology or virtual hearings in arbitral proceedings.

Professor Abdel Wahab also stressed the importance that institutions, users, arbitrators and counsel invest in technology, get training to address technical aspects and issues of online hearings, and address the necessary adaptation of techniques for cross-examination of witnesses to the specificities of the online world. As to the practical implications, Professor Abdel Wahab emphasised the need for all the participants in an online hearing to perform dry-run tests before the start of a hearing to minimise technical problems and address confidentiality and cybersecurity issues, matters related to use of software and hardware, document management system, online transcription, etc.

In conclusion, Professor Abdel Wahab warned that while the global arbitration community's successful adaptation to the crisis accelerated the integration of ICT into arbitration proceedings and obliged parties, counsel, arbitral institutions and tribunals to explore the online hearing option that was not previously welcomed for hearings on merit, the migration to the virtual world has also challenged certain existing arbitration practices and has established novel procedural norms. These now oblige the global arbitration community to rethink the overall approach to international arbitration and its tools, methods, procedural specificities and how best to integrate technology while balancing the requirements of efficiency and due process.

In his view, the longer the period during which physical (non-virtual) hearings cannot take place, the more receptive people will be to online hearings and the more likely such hearings will become a 'normalised' option. However, there are still many factors to address in conducting online arbitration proceedings such as creating interactive virtual platforms for administering arbitration proceedings wholly or partially online by arbitral institutions, and the necessity for incorporating protocols for online hearings and the use of technology in the parties' arbitration agreement. Additional considerations could include enacting mass amendments to arbitration laws and amending arbitration rules to provide for the express use of technology and online hearings as well as issuing dedicated online arbitration rules.



A recording of the webinar can be accessed here.

Submitted by Nadia El Baroudi-Kostrikis, ArbitralWomen member, Attorney at law, FCI Arb, Principal of NBK Law firm, Nicosia, Cyprus

AAA-ICDR Arbitrating Domestic and International Life Science Disputes: Differences and Complexities, on 8 October 2020, by Webinar

The differences and complexities of arbitrating domestic and international life sciences disputes were thoroughly discussed in a two-part series sponsored by the AAA-ICDR on 8 October 2020 on Zoom. ArbitralWomen member and domestic and international arbitrator **Ruth V. Glick** moderated the first presentation, featuring a panel of speakers who included fellow AAA-ICDR Life Science Panel members, **Gary Benton**, domestic and international arbitrator, **Grant L. Kim**, Partner, Lim Nexus LLP, San Francisco, US and **J.P. Duffy**, Partner, Reed Smith, New York, US.

The field of life sciences, encompassing everything from biotech, pharmaceuticals, food and environmental technologies, is one of the fastest growing segments of the global economy. With a wide array of complex

and evolving technology, the need for efficient and final dispute resolution is paramount. Arbitration offers a number of advantages for these kinds of disputes. First, it provides confidentiality, a crucial factor in disputes where stakes are high, particularly IP cases. Second, it offers the ability to choose a knowledgeable and suitable arbitrator who understands the technology and the industry. Third, the prospect of emergency and injunctive relief as well as worldwide enforcement is available. Most major arbitral institutions, such as the AAA-ICDR, provide efficacious emergency arbitration procedures. In addition, treaties such as the New York Convention promise global enforcement. Fourth, the procedural flexibility of arbitration, with reasonable discovery proportionate to the dispute, limited motion practice and

customisable techniques for expert testimony and presentation, offer additional advantages for these kinds of cases.

The panel agreed that the efficiency of remote proceedings may be another benefit that will outlive the Covid-19 pandemic. For many of these reasons, many companies are increasingly beginning to appreciate the benefits of arbitration for life science disputes as a preferred method of dispute resolution.



The two-part series can be accessed here

Submitted by Ruth V. Glick, ArbitralWomen member, Independent Arbitrator and Mediator, Burlingame, California, USA

The Tech ADR Summit Webinar Series: 'Smart Contracts and Blockchain Dispute Resolution from International and Institutional Perspectives', on 8 October 2020, by Webinar

As part of its Tech ADR Summit Webinar Series, the CI Arb North America Branch hosted a panel discussion on smart contracts and blockchain dispute resolution from international and institutional perspectives. The webinar on 8 October 2020 was an event not to be missed for all who were keen to learn about **Kleros** —the blockchain dispute resolution platform, the **Simplified Arbitration Reference Facility** —the world's first Robotic Process Automation facility for the creation of arbitration agreements, the **SCC Platform** and how the practice of international arbitration has evolved with the advancement of technology.

The panel comprised of **Francis Xavier**, Senior Counsel, C. Arb, CI Arb



President, Partner and Regional Head of Dispute Resolution Group, Rajah & Tann

LLP in Singapore; ArbitralWomen member Professor **Patricia Shaughnessy**, Stockholm University, Former Vice-Chair of the Arbitration Institute of the Stockholm Chamber of Commerce in Sweden, Co-Chair of the Silicon Valley Arbitration and Mediation Center (SVAMC) Task-Force on Tech Disputes, Tech Companies and International Arbitration; **Adrian Iordache**, FCI Arb, Bucharest International Arbitration Center (BIAC) Project Leader, Managing Partner, Iordache Partners in Romania, Principal Solicitor, Consortium Legal in the UK; **Adriana Uson**, Head (Americas), Singapore International Arbitration Center; and **Mauricio Duarte**, Justice Entrepreneur A2J Tech, Co-Founder Legal Hackers Podcast and Guatemala

Legal Hackers, Kleros Fellow of Justice in Law and Society.

Together with co-moderators **Diogo Pereira** and ArbitralWomen member **Kirsten Teo**, the panellists navigated and explored various issues including the opportunities and challenges arising from the evolution of the SCC Platform, smart contract and blockchain dispute resolution technology, Kleros – a platform for resolving

consumer disputes in e-commerce or collaborative economy, the Simplified Arbitration Reference Facility, and whether there was a need for guidelines and regulatory safeguards with regard to these new developments.

Please stay tuned to upcoming developments in this space, particularly, the work of the SVAMC Task Force on Tech Disputes, Tech Companies and International Arbitration, and the

new CIArb ADR, Smart Contract and Blockchain working group.



Tech ADR Summit
Webinar Series

Submitted by Kirsten Teo, ArbitralWomen member, MCI Arb, International Arbitration Counsel, De Almeida Pereira, Washington DC, USA

Balancing States' Responses and the Protection of Foreign Investors in the (Post) Pandemic World, on 9 October 2020, by Webinar



Top to bottom, left to right: Alvaro Galindo, Mohamed Abdel Wahab, Yulia Levashova, Pascale Accaoui Lorfing, Makane Moïse Mbengue, Hamed El-Kadi, Clotilde Jourdain-Fortier, Sébastien Manciaux

On 9 October 2020, Dr **Pascale Accaoui Lorfing** (CREDIMI) and Dr **Yulia Levashova** (Nyenrode Business University/Utrecht University) organised the webinar 'Balancing States' Responses and the Protection of Foreign Investors in the (Post) Pandemic World'. Prominent academics, practitioners and representatives of international organisations discussed the Covid-19 crisis in relation to international investment law.

The webinar was comprised of three panels. The first panel 'The State's Response to Pandemic and Possible Defences' was composed of Dr **Catharine Titi** and Dr Pascale

Accaoui Lorfing. The two speakers discussed the State's perspective and addressed international law defences, e.g., the necessity defence, the national security interest and force majeure. The experts in the second panel entitled 'Investor's Protection at the Time of Pandemic and Aftermath' were Professor Dr **Mohamed Abdel Wahab**, Dr **Sébastien Manciaux** and Dr Yulia Levashova. They discussed the legal avenues available to foreign investors under international investment agreements (IIAs). The third panel, on 'The Response to the Pandemic from Different Parts of the World', included the experts

from UNCTAD (**Hamed El - Kadi**), the African Union (Prof. **Makane Moïse Mbengue**) and India (Prof. **Arpita Mukherjee**) reviewed the broader challenges of the pandemic in relation to a State's investment policies. The moderators of the three panels were: Professor **Attila Tanzi**, Professor **Clotilde Jourdain-Fortier** and Professor **Alvaro Galindo**.

The webinar was concluded by Professor Attila Tanzi, who provided the final remarks. He underlined the need to find a better solution from the diverse perspectives of the different countries and legal cultures that were presented during the webinar.

Such solution could be strengthened by a case-by-case interpretation of the investment protection standards, in which tribunals take a balanced view of the public and private interests at stake. He mentioned the need for an adequate filtering mechanism, during the pandemic, to distinguish credible allegations, by adding tools to reform the ISDS system, instead of rejecting it altogether. He mentioned that legislative measures properly adopted at the national level could

nonetheless be applied in a discriminatory manner in a particular case, which makes it necessary to closely analyse the way in which measures are applied. Professor Tanzi recalled Article 27 of the 2001 [Draft articles on Responsibility of States for Internationally Wrongful Acts](#), on 'Consequences of invoking a circumstance precluding wrongfulness', which leaves room for a negotiated solution between the parties on a case-by-case basis and may be the

best route to a balanced application in disputes related to the pandemic.



[Click here for the webinar recording.](#)

Submitted by Dr Pascale Accaoui Lorfing, ArbitralWomen member, Associate Member, CREDIMI, France and Dr Yulia Levashova, ArbitralWomen member, Assistant Professor, Nyenrode University, The Netherlands

Fireside Chat with ArbitralWomen President Dana MacGrath, on 13 October 2020, by Webinar



Left to right: Erika Williams and Dana MacGrath

On 13 October 2020 during Australian Arbitration Week, ArbitralWomen Board Member **Erika Williams** had a Fireside Chat with ArbitralWomen President **Dana MacGrath** to discuss how ArbitralWomen is continuing with its various diversity initiatives during the pandemic, the challenges and opportunities that women in international dispute resolution are encountering this time and institutional statistics on gender diversity.

To start, Dana highlighted how, due to the suspension of many events at the beginning of the pandemic, ArbitralWomen had shifted its focus to reporting on news and professional

achievements of our members. Dana noted that the newsletter continued to be published as usual, however there was a clear shift to events being held online.

Dana highlighted some new ArbitralWomen initiatives that have emerged such as ArbitralWomen Connect (an online mentoring initiative) and other initiatives launched by various ArbitralWomen members, such as Mute Off Thursdays (an online networking initiative). Erika commented that, due to the time that Mute Off Thursdays are held, it is difficult for women in the Asia-Pacific region to attend. This has inspired ArbitralWomen members **Chiann Bao** and **Lucy**

Martinez to organise and launch a similar networking initiative called Awesome Asia-Pacific Arbitration Ladies.

Dana highlighted some other newsworthy initiatives by ArbitralWomen members including Dr **Katherine Simpson**'s initiative to increase the gender balance on the CETA Roster of Arbitrators and an article by **Vanina Sucharitkul** on how the proposed ban on double hatting in the draft ICSID Code of Conduct hinder progress with respect to gender diversity of arbitrators on tribunals.

Erika outlined the substance of Dr Simpson's submissions, which called CETA out on the underrepresentation of women in the CETA List of arbi-

trators and noted that the European Commission responded that they will reflect on how best to promote gender balance in the drawing of the list of arbitrators, as well as in composing an arbitration panel for a specific case. Dana said that ArbitralWomen supported these sorts of initiatives and they demonstrate that even individual action can make a difference.

The discussion then turned to institutional statistics, starting with a consideration of the findings set out in the International Council for Commercial Arbitration report of the Cross-Institutional Task Force on Gender Diversity in Arbitral Appointments and Proceedings (ICCA Report). The ICCA Report showed that in 2019 women only comprised just over 21% of arbitrator appointees.

Erika was able to add the statistics from the yet-to-be-published results from a recent survey conducted by the Australian Centre for International Commercial Arbitration (ACICA) on arbitrations conducted between 2016 and 2019 related to Australia as she and ArbitralWomen member **Jo Delaney** were provided with these statistics to prepare an editorial on gender diversity in Australian-related arbitrations. The results of the ACICA survey indicate that in the 223 arbitrations referred to, less than 10% of arbitrators appointed were women. These statistics from the ACICA survey are much lower than the overall statistics reported in the ICCA Report and indicate

that there is much room to improve in Australian-related arbitrations.

Dana noted that, while thus far the arbitral institutions have been primarily responsible for the incremental progress toward increased gender diversity on tribunals, corporate counsel are key to achieving further progress. Corporate parties have indicated a commitment to diversity, but often ask how to go about implementing it. In response, Dana explained that the ERA Pledge has formed a subcommittee dedicated to addressing the needs of corporations in this regard—the Pledge Corporate Counsel Subcommittee (Pledge CSC)—of which Dana is a member. The Pledge CSC has drafted guidelines to assist corporate counsel in implementing diversity. [[The Pledge Corporate Guidelines were released in late November 2020](#)]. They provide specific, tangible steps that in-house counsel can take to improve gender diversity on tribunals and generally in dispute resolution.

Finally, Dana and Erika discussed the issue of ‘Manels’, i.e. panels consisting solely of male speakers, and their persistence in virtual events. The discussion included some ways to address the issue, such as contacting the event organisers and informing them that they can find highly-qualified female speakers, using resources such as ArbitralWomen’s membership directory and the ERA Pledge search committee. Dana also referred to ArbitralWomen’s positive messaging campaign where we

post weekly on LinkedIn and Twitter that ‘Diversity is Equally Important for Virtual Events’ and proposed that anyone who wants to promote diversity for virtual events can put this phrase or something similar in the comments of any ‘Manel’ announcements on LinkedIn. Erika also suggested we could congratulate conferences that have equal representation of male and female speakers or at least some gender diversity on their panels. Erika noted that in relation to Australian Arbitration Week, the ACICA and CIArb International Arbitration conference held on 12 October 2020 had 14 female speakers out of 36, or almost 39%, and that there was ethnic, geographic and age diversity across the speakers. Also, of the more than 20 events held throughout Australian Arbitration Week 2020, all but one event had diversity in their panels.

Dana welcomed the positive news and added that it shows how little steps, by all of us, will incrementally make a difference. It is not necessary to be unduly harsh on those who struggle to embrace or implement diversity. It takes time, and perseverance, to repeat in a positive way how important diversity is.



You can watch the Fireside Chat here.

Submitted by Erika Williams, ArbitralWomen Board Member, Independent Arbitration Practitioner, Brisbane, Australia

Australian Arbitration Week: ICC in a World of Covid-19, 13 October 2020 by Webinar

On 13 October 2020 during Australian Arbitration Week, the International Chamber of Commerce Australia (**ICC**) hosted a virtual event on the topics of ICC activities and statistics during COVID-19, the ICC Australia Nominations Committee, the workings of the ICC Commission and revision of the ICC Rules of Arbitration.

This event was moderated by **Jo**

Delaney, Partner at Baker McKenzie in Sydney and **Daisy Mallett**, Partner at King & Wood Mallesons in Sydney. The event was hosted (virtually) by King & Wood Mallesons.

The panel featured **Abhinav Bhushan**, Director of South Asia, ICC Arbitration & ADR in Singapore and **Hazel Tang**, Counsel at the ICC International Court of Arbitration in

Singapore. Both speakers provided a comprehensive update on ICC activities and statistics, noting that there has been an increased representation of women, who constitute 21% of confirmed arbitrators. Hazel also commented on the steps being taken by the ICC Secretariat to accommodate efilings, virtual hearings and other procedures to allow arbitrations to

continue during the pandemic.

The second topic of ICC Australia's Nominations Committee was presented by Dr **Matthew Secomb**, Partner and Head of International Arbitration APAC at White & Case in Singapore and **Tim Robbins**, Chambers Director and Managing Counsel at Arbitration Chambers in Hong Kong and London.

Matthew explained that ICC Australia's Nominations Committee is responsible for identifying and proposing the best Australian candidates to the ICC Court. The four ways by which ICC arbitrators are appointed include by the parties, the co-arbitrators, direct court appointment or through the national committee system. Matthew noted that the vast majority of arbitrators are appointed by parties or by the co-arbitrators. The process involves the ICC Court inviting the National Committee to propose arbitrators within seven days and examining the matter requirements. The National Committee then deliberates on potential candidates

and consults with the Secretariat on potential proposals. Finally, a formal proposal is made for one or more arbitrators to the Court.

In regards to current statistics, Tim noted that 58% of the arbitrators appointed are nominations by parties and over half of the cases are below US\$5million in dispute. London remains the top seat of arbitration and the vast majority of proposed appointments are from law firms. Interestingly, 80% of the appointments are located outside of Australia, by virtue of the location of the disputes.

The third topic regarding the workings of the ICC Commission was presented by **Bronwyn Lincoln**, Partner at Corrs Chambers Westgarth in Melbourne and **Mary Walker**, Barrister at Nine Wentworth Chambers in Sydney. Bronwyn explained the work of the ICC Commission in investigating issues relating to the conduct of arbitration and producing reports, guidelines and arbitration clauses following these investigations.

Some taskforces address ongoing issues such as the issue of enforcement of arbitral awards. Other taskforces, such as the taskforce on disputes relating to climate change, address a specific issue that has arisen. The climate change taskforce investigated the times of disputes that have or may arise with respect to climate change and provided proposals on the most appropriate manner to resolve these disputes in its report.

Mary further expanded upon the role of the taskforce on ADR and arbitration, which is a relatively new taskforce. The taskforce is considering best practices on a range of topics and with a view to improving ICC dispute resolution services. This is performed through research, consultation, policy proposals and the formation of smaller task forces, which produce practical reports and guidelines on legal, procedural and practical aspects of dispute resolution.

Ana Stanič, Principal of E&A Law in London, discussed the final topic: the revision of the ICC Rules. Ana noted that while the revised ICC Rules have been adopted, they are not effective until 1 January 2021. Some of the key changes in response to the COVID-19 pandemic include the amendment to Art 3(1) of the ICC Rules to allow electronic service; revision to Art 26(1) to give the Tribunal the discretion to hold hearings virtually, clarification of existing rules concerning consolidation and new provisions concerning conflict of interest, equality of the parties and transparency including concerning third party funders.

Peter McQueen, Arbitrator and Mediator based in Australia and the United Kingdom, concluded that court sessions have operated virtually for both the plenary sessions and special extended committee sessions, as well as committee meetings. Despite the challenges posed by COVID-19, it has been business as usual and the Court continues to seamlessly scrutinise draft and final awards.



The webinar is available to view here.

Submitted by Jo Delaney, ArbitralWomen Member, Partner, Baker McKenzie, Sydney, Australia, Bronwyn Lincoln, ArbitralWomen Member, Partner, Corrs Chambers Westgarth, Melbourne, Australia and Ana Stanič, ArbitralWomen Member, Principal, E&A Law, London, United Kingdom

ICC INTERNATIONAL CHAMBER OF COMMERCE | INTERNATIONAL COURT OF ARBITRATION® | INTERNATIONAL CENTRE FOR ADR | LEADING DISPUTE RESOLUTION WORLDWIDE | **ICC AUSTRALIA** AUSTRALIAN CHAMBER OF COMMERCE

ICC in a World of Covid-19

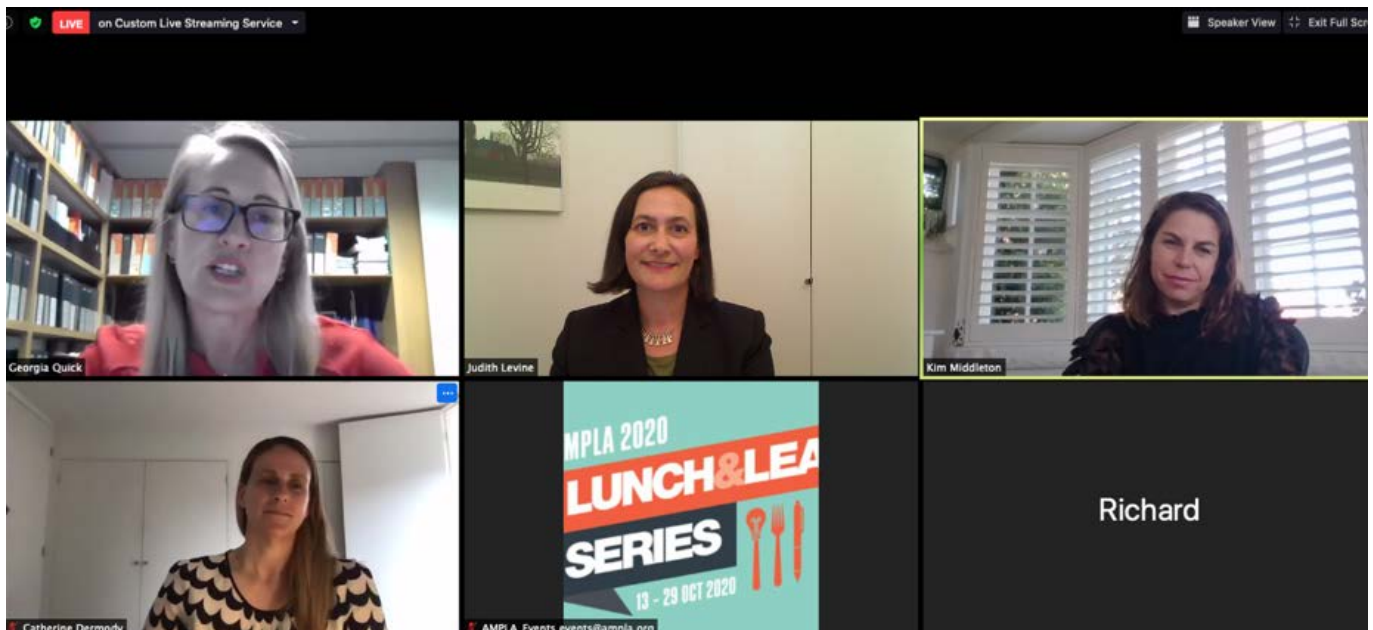
13 OCTOBER 2020, 3pm AEDT | ONLINE

COVID-19, as we know has disrupted businesses around the world. Consequently, it has also impacted on how businesses and other stakeholders formulate their dispute resolution strategies. The impact of the virus has created confusion and obfuscated the business environment. Additionally, businesses continue to grapple with the changing regulatory regimes prescribed by authorities to fight the virus. The environment continues to remain volatile as it is difficult to predict the spread of the virus, its resurgence, and supervision in the absence of any credible vaccine. ICC Australia welcomes the arbitral community to join them for an interactive webinar to discuss how the workings and function of the ICC during this World of Covid-19. The webinar would include an update of the ICC activities and statistics, overview of the work of ICC Australian nominations committee, an update on the recent work of the ICC Commission, revision of the ICC Rules of Arbitration.

REGISTRATION
Registration fees: Free of charge, however prior registration is required
Registration link:
<https://2go.iccwbo.org/icc-in-a-world-of-covid-19.html>

Venue: Online
Working language: English
For more information: Louise Spratt
Email: Louise.Spratt@au.kwm.com
Tel: +61 2 89225467
Fern Yeo
Email: fern.yeo@ccasia.org
Tel: +65 6814 0243

Renewables – A New Wave of Disputes, on 13 October 2020, by Webinar



Top to bottom, left to right: Georgia Quick, Judith Levine, Kim Middleton, Catherine Dermody

On 13 October 2020, ArbitralWomen member **Judith Levine** presented at the first of a series of virtual 'lunch and learn' sessions hosted by [AMPLA](#) (Australia's peak body for energy, resources and renewables law). The session was titled 'Renewables – A New Wave of Disputes'. **Georgia Quick** of Ashurst moderated the session. **Kim Middleton** of Marque focused on recent trends in the industry from the perspective of a transactional lawyer. **Catherine Dermody** of the Victorian Bar concentrated on recent regulatory challenges.

Judith Levine presented on trends in investor-state arbitration relating to renewable energy. She discussed Spain's recent experiences facing claims arising from changes to its incentives regime in the solar energy sector, including recent actions to enforce awards in Australia, and the decision by some investors to drop their claims in order to take advantage of the latest changes to the regime. Judith also discussed treaty claims brought by investors in more emissions-intensive industries arising as a result of a State's environmental

protection measures, as well as new treaty provisions being negotiated to protect a State's regulatory freedoms in that respect.

The panellists also answered questions about expert evidence in the renewable energy sector, strategies for risk allocation, tips for presenting cases before arbitral tribunals, and minimisation of costs.

Submitted by Judith Levine, ArbitralWomen member, Independent Arbitrator Levine Arbitration, Sydney, Australia

First Intergenerational Arbitration Symposium, on 14 October 2020, by Webinar

On 14 October 2020, New York University's Center for Transnational Litigation, Arbitration and Commercial Law and Sciences Po Law School's Arbitration Society (*Société pour l'arbitrage à Sciences Po*) organised the first edition of the Intergenerational Arbitration Symposium. The general theme of the Symposium, which took place online, was 'Procedural Issues in International Arbitration'.

The purpose of the Symposium is to allow young international arbitration practitioners to present their views on certain topics and have more experienced scholars and practitioners comment on their presentations and the papers on which their presentations are based. Professor **Franco Ferrari** (NYU) gave the welcome speech while crediting the idea behind the Symposium to Professor **Diego**

P. Fernández Arroyo (Sciences Po), who gave the closing speech.

The focus of the first panel was on 'State and Institutional Perspectives' on certain procedural issues in international arbitration. **Lucas Lim** (NYU graduate) and **Rafaela M. da Magalhaes** (Sciences Po graduate) presented their papers, with Professor **Giuditta Cordero-Moss** acting as the discussant. Rafaela gave



Professor **Pierre Tercier**. Jack Davies focussed on the inherent power of arbitral tribunals to exclude party-appointed witnesses in certain circumstances and his views on the related 2014 report of the International Law Association. In the last presentation of the Symposium, Jack Biggs discussed the powers of tribunals when dealing with disruptive parties or parties using so-called 'guerrilla' tactics, analysing the interplay between provisions explicitly granting tribunals procedural discretion and 'inherent' powers of tribunals in dealing with such issues. The panel was moderated by ArbitralWomen member **Karolina Rozycka** (Clifford Chance).

a practical assessment of Articles 6(3) and 6(4) of the ICC Arbitration Rules 2017, their interplay and the roles of the Secretary General as well as of the ICC International Court of Arbitration. Lucas then discussed the various interpretations of Article III of the New York Convention, which allows Contracting States to use

their own 'rules of procedure' in the enforcement of international arbitral awards. The panel was moderated by **Alexandre Senegačnik**.

The second panel focussed on 'Arbitrator's Inherent Powers' with presentations from **Jack Davies** (NYU graduate) and **Jack Biggs** (Sciences Po graduate) and comments from



A video of the Symposium is available on here.

Submitted by Karolina Rozycka, ArbitralWomen member, Senior Associate, Clifford Chance Europe LLP, Paris, France

GAR Interactive North America, on 14 October 2020, by Webinar



On 14 October 2020, the Global Arbitration Review ('GAR') held its annual conference in New York. Given the circumstances, the conference, called GAR Interactive North America, was held virtually. After a brief welcome, co-chair and ArbitralWomen member **Julie Bédard** of Skadden, Arps, Slate, Meagher & Flom, began the day's events with an interview of Professor **George Bermann**, Professor of Law and Director of the Center for International Commercial & Investment Arbitration at Columbia Law School. Their conversation focussed on Professor

Bermann's work writing amicus briefs for the United States Supreme Court on matters relating to arbitration and international law. Next was a panel consisting of **Andrea Gross** of Bechtel, **Doug Jones** of Atkin Chambers, **Erin Thomas** of Covington & Burling, and **Wiley Wright** of BDO, moderated by co-chair **Dietmar Prager** of Debevoise & Plimpton. That panel discussed issues relating to experts, including the extent to which arbitrators should be involved in soliciting expert evidence.

The second panel of the day was

chaired by **Tai-Heng Cheng** of Sidley Austin and consisted of **Christian Leathley** of Herbert Smith Freehills, **Joseph Profaizer** of Paul Hastings, **Meriam Al-Rashid** of Eversheds Sutherland and **Angeline Welsh** of Essex Court Chambers. The focus of the panel was the role of non-signatories in arbitrations in the wake of the US Supreme Court's decision in *GE Energy Power Conversion v. Outokumpu Stainless USA*.

The final panel of the day focussed on disclosure practices. The panel participants were **Diego Gosis** of GST,



Diego B. Gosis, ...



Jennifer Kirb...

Women member **Samaa Haridi** of Hogan Lovells serving as moderator.

GAR once again gathered an esteemed group of professionals who presented interesting and edifying perspectives on current issues in international arbitration.

Submitted by Elise Faust of Skadden, Arps, Slate, Meagher & Flom, New York City, NY, USA

Jennifer Kirby of Kirby Arbitration, ArbitralWomen President **Dana MacGrath** of Omni Bridgeway,

ArbitralWomen member **Kate Brown de Vejar** of DLA Piper, and **Alexander Yanos** of Alston & Bird, with Arbitral

Can domestic arbitration distinguish itself from litigation in court? on 14 October 2020, by Webinar

On 14 October 2020 during Australian Arbitration Week, the Resolution Institute, through **Amber Williams**, CEO, and **Russell Thirgood**, Chair, hosted an experienced panel of arbitration experts who discussed ways in which domestic arbitration in Australia can distinguish itself from litigation in the courts and what the expectations of parties who chose arbitration over litigation in a domestic context are.

The conversation started with ArbitralWomen Board Member, **Erika Williams**, Independent Arbitration Practitioner, and **Robert Riddell**, of Piper Alderman, discussing the factors they take into account when advising parties on whether or not to include an arbitration clause in their contracts.

Then, **Karyn Reardon**, of HWL Ebsworth, discussed some of the practical considerations she takes into account to ensure that an arbitration process is efficient and cost conscious. The Hon. **Peter Vickery QC** followed this discussion with what he considered to be the important factors to consider and discuss with the parties either before or at the first procedural conference. **Greg Steinepreis**, of Squire Patton Boggs, expanded on how the arbitration process can differ from the litigation process in terms of the procedural orders or directions.

The discussion then turned to the vexed issue of disclosure in arbitration,



Top to bottom, left to right: Russell Thirgood, Erika Williams, Amber Williams, Robert Riddell, Karyn Reardon, Peter Vickery, Greg Steinepreis

with Karyn and Erika giving their views on how disclosure could be limited or eliminated in arbitration proceedings. On the topic of evidence, Robert, Greg and Peter had a lively discussion on the advantages and disadvantages of written witness statements being used as evidence in chief in arbitration.

Finally, Russell addressed how an arbitrator should proceed with the process in the event that a party does

not participated in the arbitration.

The webinar concluded with each of the panellists providing their best tip for conducting an arbitration with a common theme being 'preparation, preparation, preparation'.

Submitted by Erika Williams, ArbitralWomen Board Member, Independent Arbitration Practitioner, Brisbane, Australia

Shattering Glass Ceilings – Women in ADR, on 14 October 2020, by Webinar



SHATTERING GLASS CEILINGS
WOMEN IN ADR
1 EOB MCLE pending



Rachel Ehrlich
Mediator,
Judicate West & Ehrlich ADR



Hon. Irma Gonzalez (Ret.)
Mediator & Arbitrator,
JAMS ADR



Ana Sambold
Mediator,
ADR Services

Free Webinar
Wed. October 14, 2020
12–1 pm

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that percentage is even lower for women representation in the provision of dispute resolution services, particularly in the niche of complex commercial matters with significant amounts at issue.

To discuss these challenges and provide some practical advice to women interested in becoming mediators or arbitrators, ArbitralWomen **Ana Sambold** was invited to share her path and experiences as a neutral alongside Hon. **Irma Gonzalez (Ret.)** and **Rachel Ehrlich**. The programme was hosted and moderated by **Renee Stackhouse**, the founder of [MSheLe](http://MSheLe.com), an organisation geared towards empowering women lawyers and helping them overcome obstacles to success in their careers.

According to the American Bar Association (ABA), Commission on Women in the Profession – A Current Glance at Women in the Law, April 2019, women made up 48.69 percent

of total J.D. enrollment and 50 percent of J.D.s awarded. However, women make up only 38 percent of the legal profession (see ABA's [A Current Glance at Women in the Law 2019](#)). Sadly,

Submitted by Ana Sambold, ArbitralWomen member, internationally accredited Mediator and Arbitrator, Sambold Law & ADR Services, San Diego, California, USA

Australian Arbitration Week: Trends in Litigation and Arbitration Concerning Climate Change, on 15 October 2020, by Webinar

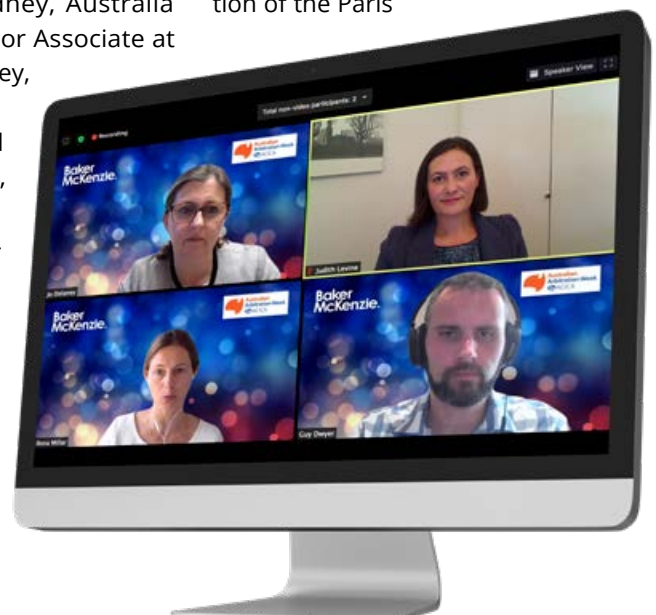
On 15 October 2020, as part of Australian Arbitration Week held by the Australian Centre for International Commercial Arbitration (ACICA), Baker McKenzie in Sydney hosted an insightful virtual event titled 'Heating Up: Trends in Litigation and Arbitration Concerning Climate Change'.

Moderated by ArbitralWomen member **Jo Delaney**, Partner of Baker McKenzie, the event featured a panel consisting of ArbitralWomen member **Judith Levine**, Independent Arbitrator and former Senior Legal Counsel at the Permanent Court of Arbitration

(PCA), **Ilona Millar**, Partner and Head of Global Climate Change Practice at Baker McKenzie, Sydney, Australia and **Guy Dwyer**, Senior Associate at Baker McKenzie, Sydney, Australia.

The panel presented on three key topics, namely, the trends in climate and environmental arbitrations, including disputes about emissions reduction purchase agreements and cer-

tified emission reduction credits, the issues arising from the implementation of the Paris



Top to bottom, left to right: Jo Delaney, Judith Levine, Ilona Millar, Guy Dwyer

Agreement, including climate finance and other areas apt for disputes and the trends in climate litigation occurring in Australia and overseas.

Ilona Millar provided a concise overview of the existing international legal framework around climate change, including the Paris Agreement. Ilona noted that there are unlikely to be disputes directly through the compliance mechanisms of the Paris Agreement, but instead States will face reputational damage for not meeting emissions targets. Further, we will see the impact of climate change in other areas such as regulation and insurance, given the wild-fires/bushfires we have seen recently.

Guy Dwyer noted the interesting developments that were occurring in the second wave of climate litigation, such as recent trends in public law actions, primarily based on government conduct, as well as emerging private law actions, involving increased action against super-annuation funds. Guy predicted there would be an increase in climate change litigation once the technical ability to link climate change causally with certain weather events improves.

Judith Levine provided an overview of the PCA's experience with disputes related to Kyoto Protocol projects. She also discussed the spate of investment treaty claims commenced in connection

with regulation of renewable energy projects. Spain in particular, has faced over 40 treaty claims by solar energy investors, some of whom have sought enforcement of their awards in Australia; while others are considering dropping their claims in order to take advantage of more recently introduced incentive schemes. Judith referred to carve-outs being negotiated by states in new treaties with respect to environmental protection measures.

Submitted by Judith Levine, ArbitralWomen member, Independent Arbitrator, Levine Arbitration, Sydney, Australia

'Socially Distanced or Procedurally Flawed: International Arbitration in Times of Covid', on 19 October 2020, Hong Kong, by Webinar

On 19 October 2020, as part of Hong Kong Arbitration Week, CMS head of Arbitration Dr **Nicolas Wiegand** moderated a virtual panel discussion on "Socially Distanced or Procedurally Flawed: International Arbitration in Times of COVID".

Just when you thought you'd heard everything there is to say about virtual hearings, this panel proved a refreshing and enjoyable exchange of experiences from the perspective of the arbitrator (ArbitralWomen member **Judith Levine** of [Levine Arbitration](#) in Sydney), client (**Christina Tauber**, in-house counsel at Strabag in Vienna, Austria), and expert witness (**James Nicholson**, of FTI consulting in Singapore).

The panellists discussed their new normal, what it's like to prepare testimony for a virtual hearing; what it's like to deliberate with co-arbitrators online; the risks of set aside, enforcement or challenge in the event of ordering a virtual hearing over the objection of a party; concerns about credibility of witnesses and some of the (more extreme and expensive) ways of addressing them.



Top to bottom, left to right: James Nicholson, Nicolas Wiegand, Christina Tauber and Judith Levine

The audience participated with many questions posed throughout the session, and voted on three virtual polls, including whether they'd prefer to travel to a hearing or do a virtual one in a different time zone; whether virtual hearings may impact settlement discussions; and whether the increase in virtual hearings will

increase willingness to appoint arbitrators based in less-convenient locations (spoiler alert: yes it will!)

You can watch the session on demand. Further information [here](#).

Submitted by ArbitralWomen member Judith Levine, Independent Arbitrator, Sydney, Australia

‘Push for Parity: Practical Tools for Emerging Arbitrators’: second webinar on ‘Getting your First Appointment – Insights from Practitioners’, on 20 October 2020, by Webinar



Top to bottom, left to right: Maguelonne de Brugiére, Ruth Bryne, Mariel Dimsey, Angharad Parry, Krystle Baptista Serna, Abayomi Okubote

On 20 October 2020, the Equal

Representation in Arbitration Pledge Young Practitioners Subcommittee (ERA Pledge YPSC), hosted the second panel in its new webinar series titled ‘Push for Parity: Practical Tools for Emerging Arbitrators’, with support from ArbitralWomen and Young ArbitralWomen Practitioners (YAWP). ArbitralWomen member **Krystle Baptista Serna** (independent arbitrator, Krystle Baptista, International Law & Arbitration) was a speaker at the event.

The series is aimed at emerging arbitrators seeking to improve their profile and visibility. It covers a variety of topics, from launching a career and securing a first arbitrator appointment to managing your first arbitrations. This second panel was designed to showcase the experience of four female practitioners in obtaining their first arbitral appointments. Together with Krystle Baptista, the panel included the following leading practitioners and professionals: **Ruth M.D. Byrne**, Partner at King & Spalding; **Mariel Dimsey**, Partner at CMS Hasche Sigle, Hong Kong LLP; and **Angharad**

Parry, Barrister at Twenty Essex. The panel was moderated by **Maguelonne de Brugiére**, Senior Associate at Herbert Smith Freehills and YPSC Co-Chair and by **Abayomi Okubote**, Senior Associate at Olaniwun Ajayi LP, and YPSC Member and ERA Pledge Africa Sub-Committee Member.

The speakers explained how they were first appointed as arbitrators. While Ruth M.D. Byrne and Mariel Dimsey recounted that their first appointment was by the ICC Court as sole arbitrators, Krystle Baptista said that it was the Madrid Court of Arbitration that granted her the opportunity of being an arbitrator for the first time. However, the most unusual story of a first appointment came from Angharad Parry, who explained that she was appointed as ‘sub-arbitrator’ within an arbitration, to decide over confidential and privileged documents.

When asked about how to approach institutions to get those first appointments, all the speakers stressed the importance of networking and approaching people in the secretariat

of institutions for guidance. The role of arbitral institutions was stressed as critical in obtaining that first appointment. Becoming known to members of the institutions and participating in activities, especially smaller niche events, was advised. Mentoring also played a positive part in a number of the speakers’ journeys. They highlighted that, although it would be ideal to build organic mentorship relationships, applying for specific programmes – like the ones provided by ArbitralWomen and Young ICCA – can be a very useful tool, especially in a Covid-19 context.

The role of tribunal secretaries was also discussed. Krystle Baptista stressed that her experience as tribunal secretary in arbitrations has been crucial in gaining confidence and rapport to be an arbitrator. It has also allowed her to acquire the tools to manage the procedure and deal with complex and unforeseen procedural issues that may arise in the proceedings.

Emphasis was also placed on the value of personal branding and marketing, along with writing and webinar participation. It was acknowledged that there are different paths to success, however, and the best route often involves tapping into an area you enjoy and developing within it. During the question and answer segment, an attendee asked how best to forge relationships in the current climate of social distancing: a suggestion was to touch base remotely. People have become more openminded and are more likely to accept an invitation to interact virtually.

There was an extremely helpful discussion on how to deal with the negative biases that may be directed towards an aspiring or acting arbitrator due to their gender, ethnicity, age or other factor. Mariel Dimsey’s advice was to put people’s apprehensions out of mind, be confident and concentrate on

doing a good job. Overall, participants were advised to be patient, given that breakthroughs can take time to emerge, and to focus on areas they enjoy and, in due course, they will thrive.

The panel ended with a call to change the misconceived perception of lack of authority of women arbitrators. A recording of this panel is available [here](#).

Submitted by Paula Arroyo Montes, Intern, Krystle Baptista, International Law & Arbitration, Madrid, Spain and Tope Adeyemi (FCI Arb), ArbitralWomen member (YAWP), Barrister, London, UK

Developing your career during the current crisis: strategies for success, on 20 October 2020, by Webinar

On 20 October 2020, ArbitralWomen and Withers World-wide hosted a webinar as part of Hong Kong Arbitration Week, organised by **Rekha Rangachari** and **Sherlin Tung**.

Opening remarks were delivered by **Eleni Polycarpou**, on behalf of Withers Worldwide, and by **Elizabeth Chan**, on behalf of ArbitralWomen.

Speakers included Dr **Helena Chen**, of Pinsent Masons; **Melody Wang**, of Fangda Partners; **Justin D'Agostino**, of Herbert Smith Freehills; **Kevin Kim**, of Peter & Kim; and **Sherlin Tung**, of Withers Worldwide.

Key points from the webinar included as follows:

First, the speakers generally acknowledged that the Covid-19 pandemic has been a very challenging period. While the practice of working remotely existed pre-pandemic, working remotely for long stretches has been unusual. Speakers also recognised that each individual's situation is different, given that social distancing restrictions have varied from country to country. The pandemic has brought

about particular challenges for women, who often bear significant childcare responsibilities, as well as those living alone, or expats living far away from family.

Second, the speakers discussed how working remotely has been particularly challenging for young lawyers. Whilst more experienced practitioners already have well-established networks, both within and outside their firms, it has been more challenging for young lawyers to establish these networks. Tips for associate lawyers included picking up the phone or arranging a video call to speak with colleagues (especially as it can be too easy to communicate by email only!). There are also opportunities for associates to get involved in organising and participating in webinars (both inside and outside the firm), given this is the normal format now for hosting events. Younger lawyers were also encouraged to participate in online moots to get advocacy experience.

Third, organisations, including law firms, are becoming much more

open-minded about flexible working arrangements. Speakers recognised that, on the whole, remote working had not negatively affected productivity levels. People can be trusted to work and, going forward, should be given the choice when to work from home and when to work from the office.

Fourth, in response to an audience question about the impact of visa processing delays on their applications to law firms, the speakers acknowledged that there have been some administrative challenges for foreign lawyers seeking work. That said, while some firms have been more conservative in hiring associates, other firms are expanding and hiring more associates.

Finally, the speakers ended with a positive message, encouraging everyone to stay happy and healthy. This challenging time will pass, and our collective resilience will carry us through.

Submitted by Elizabeth Chan, ArbitralWomen Board Member and Associate at Three Crowns, London, UK



Top to bottom, left to right: Sherlin Tung, Elizabeth Chan, Kevin Kim, Melody Wang, Eleni Polycarpou, Justin D'Agostino

Mediator-Litigator Dialogue: 'What do Litigators and Mediators Expect of Each Other?' California Lawyers Association Virtual 2020 Litigation and Appellate Summit, on 20 October 2020, by Webinar



Top to bottom, left to right: Ruth V. Glick, Rebecca Westerfield, Terrance Evans, Neel Chatterjee and Jeff Kichaven

What do Litigators and Mediators actually expect of each other? This topic was examined by participants in a Mediator-Litigator dialogue on 20 October 2020, during the California Lawyers Association's Virtual Litigation and Appellate Summit.


Domestic and International mediator and arbitrator and ArbitralWomen member **Ruth V. Glick** moderated a panel composed of litigators, **Neel Chatterjee**, partner of Goodwin Law's Intellectual Property practice in Silicon Valley and **Terrance Evans**, partner of Duane Morris, San Francisco and Chair

of the Litigation Section of the California Lawyers Association, as well as mediators, ArbitralWomen member, Hon. **Rebecca Westerfield** (ret), founding member of JAMS, and **Jeff Kichaven**, Chambers ranked mediator for B2B disputes.

The panel agreed that, in the age of Covid-19, we would be lost without the use of teleconferencing for the resolution of disputes. While the advantages of cost saving, informality, and comfort in the teleconference setting outweigh its challenges, the panel was particularly mindful of confidentiality breaches,

which can occur when people forget that they are using a medium that can broadcast private exchanges. However, the consensus was that this pandemic has contributed to reinventing mediation for the better.

Neel, who has represented Facebook and other well-known high-tech clients, commented on the strategic business goals that are often present but undisclosed in mediation. Terrance revealed that the financial and business clients he represents sometimes litigate for more than just the exchange of money. The mediators, Rebecca and Jeff, shared their techniques for analysing the impediments to settlement and how to handle the strong personalities they often encounter.

For more information about the programme contact Ruth Glick at rvg@ruthvglick.com .

Submitted by Ruth V. Glick, ArbitralWomen member, Independent Arbitrator and Mediator, Burlingame, California, USA

Managing 'Belt and Road' Business Disputes: A Case Study of Legal Problems and Solutions, on 21 October 2020, in Hong Kong and by Webinar

On 21 October 2020, as part of the 'ADR in Asia Conference: Redesigning International Arbitration' organised by the Hong Kong International Arbitration Centre (HKIAC), during Hong Kong Arbitration Week, ArbitralWomen member **Chiann Bao**, of Arbitration Chambers and Dr **Michael Moser**, introduced their new book, titles '*Managing "Belt and Road" Business Disputes: A Case Study of Legal Problems and Solutions*'. The



Left to right: Chiann Bao, Michael Moser

book is a follow-up to the comprehensive *'Managing Business Disputes in Today's China: Duelling with Dragons (2007)'* guide on foreign direct investments disputes that can arise in the course of initiating and operating a Chinese joint venture. Since its inauguration by the Chinese government in 2013, the 'Belt and Road Initiative' (BRI) has included projects in more than 70 countries, spanning diverse economic and legal environments. The nature of the BRI, coupled with the economic downturn as a result of the Covid-19 pandemic, will inevitably generate more challenges than ever.

Like its predecessor, this book poses a hypothetical scenario in order to explore the potential issues that may arise from Chinese-foreign business relationships in the BRI context. After setting the scene with the 'Afrina Government's' ill-fated infrastructure project involving Chinese and foreign parties, subsequent chapters provide comprehensive insight on and highlight the following issues that one must consider, when dealing with BRI disputes:

- i. Dispute settlement options;
- ii. Informal dispute settlement approaches;



Left to right: Judith Levine, Helen Tang

- iii. Disputes involving Chinese State-owned Enterprises;
- iv. Construction and project finance disputes;
- v. Corruption and bribery;
- vi. Sanctions; and
- vii. Environmental issues. The book provides guidance from seasoned practitioners on the legal and practical issues of disputes that arise from engaging with Chinese companies doing business outside China in the context of BRI projects.

Contributors to the book provided short video summaries of their chapters, played to the in-person conference attendees, and accessible to the virtual attendees. Amongst the contributors to the book are

ArbitralWomen members **Helen Tang**, of Herbert Smith Freehills in China, whose chapter deals with Informal Dispute Settlement Approaches, **Judith Levine**, Independent Arbitrator in Australia, who, together with **Nicola Swan**, contributed the chapter on Environmental Issues and Climate Change Related Disputes and **Jennifer Lim**, of Sidley Austin, who wrote on *Force Majeure* and Hardship.



More information and pre-orders of the book

Submitted by Judith Levine, ArbitralWomen member, Independent Arbitrator, Levine Arbitration, Sydney, Australia

The GAR Live Debate: 'This House Believes that There is No Such Thing as a Bad Challenge', on 22 October 2020, by Webinar

On 22 October 2020, as part of the [GAR Live Conference](#) during Hong Kong Arbitration Week, ArbitralWomen member **Judith Levine**, an independent arbitrator based in Sydney, Australia, participated in the 'GAR Live Debate', tasked with speaking in favour of the motion that 'This house believes that there is no such thing as a bad challenge'.

While her teammate **Robert Wachter**, of Lee & Ko in Seoul, South Korea, focussed on the fundamental right to an independent tribunal

from the viewpoint of a party, Judith focussed on the broader notion that good things can come out of arbitrator challenges, even when they fail. That is, even if a challenge backfires (and is costly, causes delays and discomfort), this is not necessarily a 'bad' thing to the extent it may represent some sense of discontent among arbitration users, which then ripples into a positive change at a systemic level. She gave the audience four examples of failed challenges from actual cases, which each signify a greater concern in the

zeitgeist that has then manifested itself in positive systemic change. The examples included the 'Overbooked Arbitrator', the 'Delegator', the 'Bully' and the 'Nuclear Option'. The positive systemic changes resulting from these challenges included a greater focus by institutions on [arbitrator availability](#), clarification on the dos and don'ts of use of [arbitral secretaries](#), articulation of [expectations of civility](#), and a focus of what may and may not work for parties in protesting the use of [virtual hearings](#) over their objections. She



Top to bottom, left to right: Judith Levine, Doug Jones, Ing Loong Yang, Robert Wachter, Meg Utterback, Sarah Grimmer and Kevin Kim

pointed also to relevant provisions in the recently released draft [UNCITRAL/ICSID Code of Conduct](#).

Their opponents, **Meg Utterback**, of King & Wood Mallesons in New York, US, and **Ing Loong Yang**, of Latham &

Watkins in Hong Kong rounded out the lively Oxford Union style debate with arguments against the motion. **Doug Jones**, participating from Toronto, Canada, adjudicated.

Other ArbitralWomen speaking at the GAR Live Hong Kong conference were **Sherlin Tung** of Withers in Hong Kong and **Bronwyn Lincoln**, of Corrs Chambers Westgarth, in Melbourne, Australia. Both participated in the 'Decision Time' panel recounting vexed issues faced in practice (like suspicions of corruption and handling tricky opponents) and polling the audience on how they would have acted.

Submitted by ArbitralWomen member Judith Levine, independent arbitrator, Levine Arbitration, Sydney, Australia

The Tech ADR Summit Webinar Series – Online Dispute Resolution: the New Frontier, on 22 October 2020, by Webinar

The Chartered Institute of Arbitrators (CIArb), North America Branch, organised a Tech ADR Summit Webinar Series in October. One of the panels discussed the New Frontier of Online Dispute Resolution (ODR).

Jaya Sharma, the moderator, introduced the subject, speaking about how technology is being used in dispute resolution, where we are coming from and where are we heading.

Colin Rule spoke about the 'ODR Big Bang', which in fact started as a bit of a whisper. People thought that if we are going to interact online, this may generate disputes, so we should also select a dispute resolution method. The real father of ODR is **Ethan Katsh**, who shaped the early growth of the field. Twenty years ago, most of the work was focussed on e-commerce and domain names: an online pilot project with eBay was put in place to resolve disputes between buyers and sellers, and early on, the [Uniform Domain Name Dispute Resolution](#)

[Policy](#) (UDRP) created an ODR mechanism, because it was expected that many disputes would arise. This led to the creation of the movement. In addition, the [International Council for Online Dispute Resolution](#) (ICODR) was founded and standards have been established, which has continued taking the field forward.

Mirèze Philippe recounted that

it all started in 2000, when **Gabriele Kaufmann-Kohler** gathered lawyers and engineers to brainstorm about how technology can assist dispute resolution in streamlining processes. Since then, the group gathered annually to share experiences. Sadly, few people around the world believed in ODR before, but with the pandemic people have started considering



Top to bottom, left to right: Mirèze Philippe and Mohamed Abdel Wahab, Jaya Sharma and Daniel Rainey

technology as a useful tool. Suddenly, everyone became an ODR expert, although they only used platforms to hold hearings and not to conduct and solve disputes online. ODR can be used to solve all types of disputes. The more users can bring their disputes online to seek remedy, the less people will be deprived from their human right of access to justice.

Mohamed Abdel Wahab indicated that there are two untapped areas in ODR: investor-State disputes and State-to-State disputes. He also pointed out that there is a degree of scepticism about private justice and individuals deciding cases, so perhaps integrated technology can generate

a degree of trust and assurance. He hopes that the human element will not be in regression, but this is an area where the next frontier would be. Justice can be taken online, provided people have access to technology. He then spoke about virtual hearings and their pros and cons, due process issues, cybersecurity. He added that people have been pushed out of their comfort zone, concluding that technology has transformed our reality and we need to adapt.

Daniel Rainey observed that organisations wanting to use technology to accomplish their dispute resolution work and providers of that service have no guidance to follow.

This is one of the huge issues that the ICODR addresses by means of the standards it sets forth. He observed that a past mistake was to take mediation and simply use technology to put it online. The fourth-party concept is a very powerful concept. Just the very notion of technology changes human interactions. It is not about the technology: It is about the way the technology affects us.

The panellists concluded that ODR is no science fiction.

Submitted by Mirèze Philippe, Special Counsel, ICC International Court of Arbitration, ArbitralWomen Co-founder and Board Member, Paris, France


‘Key issues of “Green” Energy in Ukraine: “Green” Energy in Crosshairs of Law Enforcement Agencies and Guaranteed Buyer’s debt. Practical Advice’, on 29 October 2020, by Webinar

On 29 October 2020, the webinar titled ‘Key issues of “Green” Energy in Ukraine: “Green” Energy in Crosshairs of Law Enforcement Agencies and Guaranteed Buyer’s debt. Practical Advice’, took place, organised by Arzinger law firm (Ukraine). It was divided into two blocks. During the first part of the webinar, the current boom of law enforcement activity was discussed. **Kateryna Gupalo**, Partner of the White-Collar Crime practice and **Mykola Nychyporuk**, Associate, spoke of a case study based on the recent trends in criminal proceedings related to green energy, gave advice on what to do in case of a visit of a law enforcement body and considered whether prevention measures are possible.

The second part of the event was dedicated to the feed-in tariff debt, the question why the Memorandum between State bodies and renewable energy sources (RES) producers is not implemented and what actions can be taken to enforce it. **Oksana Karel**, Counsel and Co-head of the International Litigation and Arbitration

practice, commented on the ICC dispute resolution mechanisms available to renewable energy producers, for disputes against a State-owned enterprise a Guaranteed Buyer, for non-payment for the electricity they produce, as well as tackled the ways in which the upcoming changes to the ICC Arbitration Rules may influence the parties to a Power Purchase Agreement (PPA) in their pursuit to reinstate rights should the latter be breached. **Iaroslav Chaker**, Head of the Energy & Natural Resources practice

and **Oleksii Prudkyi**, Senior Associate of the Litigation practice also provided their input on the topic.

 A recording of the webinar is available here.

Submitted by Oksana Karel, ArbitralWomen member, Arzinger, Counsel, Co-Head of International Litigation and Arbitration, Member of the German Desk, Kyiv, Ukraine



WEBINAR
KEY ISSUES OF “GREEN” ENERGY IN UKRAINE:
“Green” Energy in Crosshairs of Law Enforcement Agencies and Guaranteed Buyer’s debt. Practical Advice.

29 October 2020 | **14:00 p.m. – 16:00 p.m.** | **online**

Speakers:

- Kateryna Gupalo**
Partner of White Collar Crime, attorney-at-law
- Iaroslav Chaker**
Counsel, Head of Energy & Natural Resources practice at Arzinger Law Firm, attorney-at-law
- Oksana Karel**
Counsel, Co-Head of International Litigation & Arbitration practice, attorney-at-law
- Oleksii Prudkyi**
Senior Associate of Litigation practice, attorney-at-law
- Mykola Nychyporuk**
Associate of White Collar Crime

News you may have missed from the ArbitralWomen News webpage

This section in the ArbitralWomen Newsletter reports on news posted on the ArbitralWomen News webpage regarding events or announcements that occurred during November 2020 that readers may have missed.

ArbitralWomen Member Victoria Pernt Launches myArbitration

1 November 2020

ArbitralWomen member Victoria Pernt has launched myArbitration, a series of short video interviews with people from the world of arbitration. The series provides a platform of prominent and rising practitioners, with the aim of making the field more accessible, equal and diverse. Interview subjects share their personal stories, views, and passion projects.

Discussing key challenges and developments, myArbitration raises awareness and promotes diversity (with a

focus on gender, but also regional, racial and socio-economic diversity), transparency, sustainability, and other topical and important issues in international arbitration.

myArbitration videos will be posted and promoted on [LinkedIn](#) and [YouTube](#).

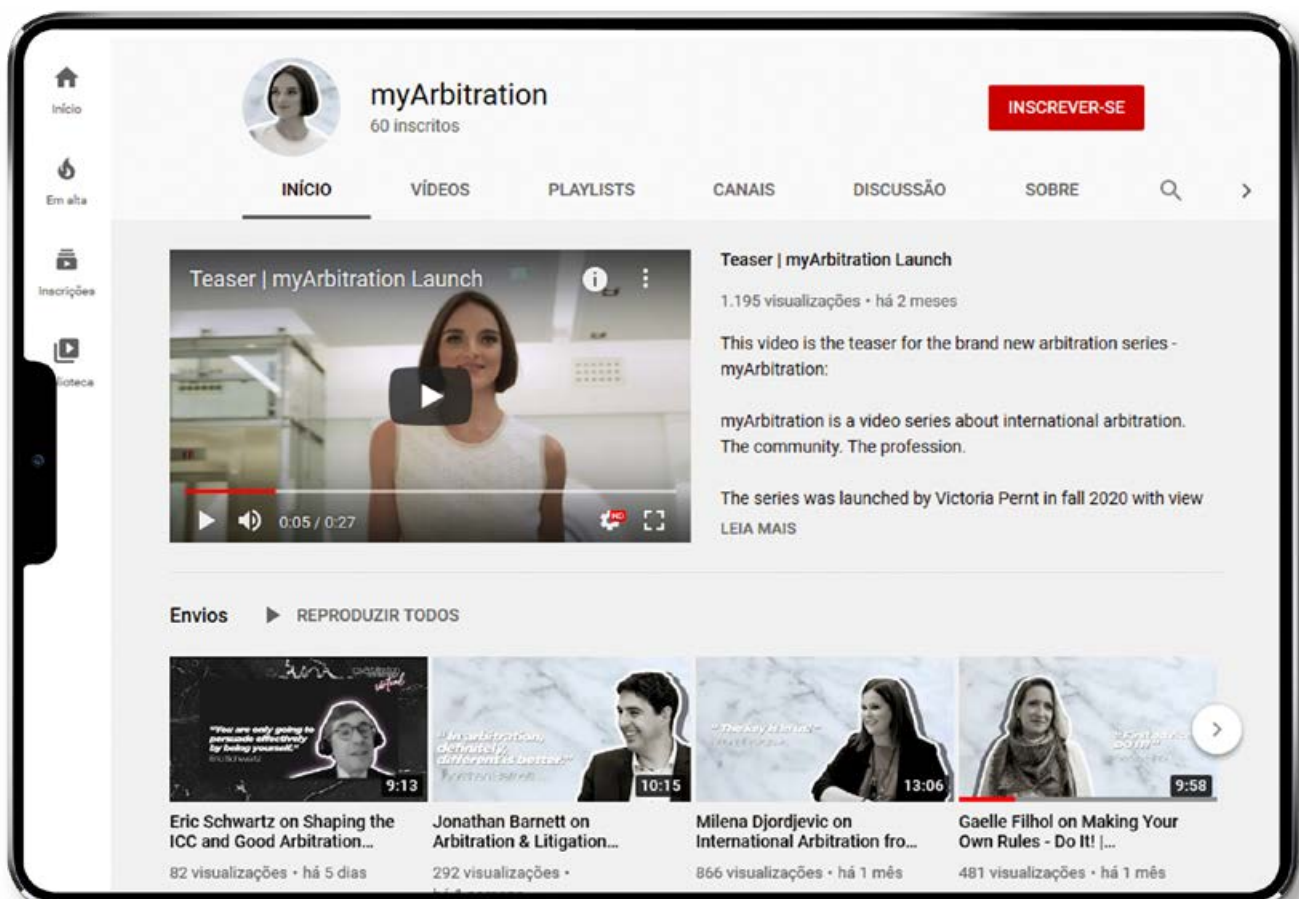
The first myArbitration video features ArbitralWomen Advisory Board member and former Vice President **Gabrielle Nater-Bass**. Her interview is available on [LinkedIn](#) and [YouTube](#).

Upcoming interviews include prominent or rising female practitioners

such as **Mirèze Philippe, Gaëlle Filhol, Stefanie Pfisterer, Lucy Greenwood, Amanda Lee, Crina Baltag, Chiann Bao, Catherine Rogers, Milena Djordjevic**, as well male practitioners **Eric Schwartz, Michael McIlwrath** and others. Interviews generally consider a balance of gender, regions, and in-person vs virtual interviews.

Follow myArbitration on LinkedIn and subscribe on YouTube for the latest updates. Many new interviews will be released over the coming weeks.

Many congratulations to Victoria for launching this exciting new series!



Checklist of Best Practices for the Selection of Arbitrators and Survey

By Maria Beatriz Burghetto, ArbitralWomen Board Member, independent lawyer and arbitrator, Paris, France
14 November 2020

A Checklist of Best Practices

for the Selection of Arbitrators and a Survey on the Selection of Arbitrators were launched by the Paris members of the ERA Pledge Steering Committee, **Caroline Duclercq, Laurence Kiffer, Alison Pearsall, Mirèze Philippe, Gisèle Stephens-Chu, and Valence Borgia** and **Maria Beatriz Burghetto**, the author of this post, in a non-official capacity. The launch took place during a webinar on 14 October 2020, hosted by the **Paris Bar** with the support of the **ERA Pledge** and **ArbitralWomen**, that was attended by over a hundred participants. A recording of the webinar (in French only) is available [here](#).

The Checklist outlines the best practices, methods and tools available for selecting arbitrators, relying on objective criteria that promote both efficiency and diversity in the selection of arbitrators.

The goal of the Survey, which will first be launched in France, is to explore the criteria and methods employed by arbitration users when nominating arbitrators. It also provides a tool to reflect on the various issues listed and to address the selection process from a different perspective.

Importance of applying good practices in arbitrator selection and of diversity of arbitral tribunals

Arbitrator selection is a core element of the practice of arbitration. It is a crucial step that may determine, for better or for worse, the quality of the arbitral proceedings and of the decisions the tribunal will make, including the award on the merits. Parties' in-house and outside counsel and arbitral institutions may add significant value to the selection process, based on their experience and knowledge of the milieu.

The risk, however, is that, by adher-



ing too much to the 'tried and true' and excluding innovation and alternatives, arbitrator selection turns into repeated appointments of 'usual suspects', leading to some arbitrators being overbooked while others who are equally competent are rarely appointed. This perpetuates endogamous appointments that undermine the legitimacy of arbitration, not only from the diversity standpoint, but also from the equally important aspect of independence and impartiality of the arbitrators.

These concerns with repeat appointments, and specifically with diversity in arbitrator selection, have attracted the international arbitration community's attention for the past decade (see Queen Mary University surveys on '[Choices in International Arbitration](#)' (2010) and '[Current and Preferred Practices in the Arbitral Process](#)' (2012), which included questions on arbitrator selection, and Berwin Leighton Paisner survey on '[Diversity on Arbitral Tribunals: Are we getting there?](#)' (2017)).

To respond to these concerns and the objective of many in the arbitration community '[to increase, on an equal opportunity basis, the number of women appointed as arbitrators in order to achieve a fair representation as soon practically possible, with the ultimate goal of full parity](#)', the French chapter of the [Equal Representation in](#)

[Arbitration \(ERA\) Pledge](#) has recently proposed tools that seek both to guide and understand appointment practices:

1. a checklist of 'best practices' in arbitrator selection, and
2. a survey on criteria and preferred methods for arbitrator selection used by arbitration users, and on the impact diversity policies may have on arbitrator selection and performance.

Main takeaways from the Checklist

The Checklist of Best Practices for the Selection of Arbitrators is addressed to parties and their counsel, in particular users of arbitration who may not have much experience in this area. It is in five parts: the first part deals with preliminary considerations that parties must attend to at the beginning of the arbitral proceedings; parts two and three focus on parties' selection of co-arbitrators and of the president of an arbitral tribunal, while part four concerns what parties can do where it is the arbitral institution that is required to appoint an arbitrator. Finally, the Checklist highlights the importance of taking into consideration the personality and experience of arbitrators to ensure balance and a good dynamic within the tribunal.

EQUAL REPRESENTATION IN ARBITRATION PLEDGE
CONSTITUTION DU TRIBUNAL ARBITRAL
'CHECKLIST' DE BONNES PRATIQUES POUR LE CHOIX DES ARBITRES

Selon l'adage, « tant vaut l'arbitre, tant vaut l'arbitrage ». Que l'on soit conseil, directeur/trice juridique, co-arbitre ou utilisateur/trice de l'arbitrage, si le choix des arbitres est une étape cruciale de la procédure, il ne repose pas toujours sur une stratégie suffisamment pensée en amont en fonction des caractéristiques particulières du dossier.

Par ailleurs, les praticien(ne)s se font l'écho d'un manque de diversité des arbitres désigné(e)s par les parties, les co-arbitres ou dans une moindre mesure les institutions, manque de diversité qui se ressent sur la conduite des procédures.

Le « Checklist » ci-après présente de bonnes pratiques, méthodes et outils disponibles pour procéder au choix des arbitres, sur la base de critères objectifs de nature à promouvoir tant l'efficacité que la diversité de l'arbitrage.

POUR PLUS D'INFORMATIONS ALLER A ARBITRATIONPLEDGE.COM

1 **Considérations préliminaires**
une fois qu'un litige est né, que prévoit la clause négociée en amont du conflit sur la constitution du tribunal arbitral et comment influence-t-elle sur le choix des arbitres ?

- Le type d'arbitrage : institutionnel, ad hoc (un arbitrage ad hoc nécessitant a priori plus de questions qu'un arbitrage institutionnel)
- Le nombre d'arbitres : 1 ou 3 (il faut il revoir le nombre en connaissance de cause du litige ?)
- Les qualités requises pour l'arbitrage : arbitres à désigner (celles qui opèrent dans la clause, ou découlant de la nature du litige)
- Si la clause identifie nommément des arbitres
- Autre modalité de désignation des arbitres prévues par la clause
- Possibilité pour les co-arbitres de consulter les parties pour choisir le président(e) du tribunal arbitral (sous réserve du faccord préalable des parties)
- Possibilité pour les parties de modifier la clause en fonction du montant en jeu / de la complexité du litige, et le cas échéant, revoir le nombre d'arbitres

2 **Désignation guidée la co-arbitre par la partie :**

- Qui choisit : partie/juriste d'entreprise ou l'arbitre / l'ille d'entreprise ou l'arbitre d'entreprise dans le choix guidé la co-arbitre : « désignation d'arbitres d'entreprise et de retour d'expérience sur les arbitres »
- Critères de choix : langue, culture, profil professionnel (ancien(ne) magistrat(e), professeur(e), avocat(e), expert(e), loi applicable, nature du contrat, disponibilité, diversité des arbitres conformément au Pledge, expertise, diligence, efficacité)
- Recherche de candidatures : consultation d'avocat(e) / juriste spécialiste en arbitrage (notamment via le EBA Search Committee), recherche sur des sites contenant des annuaires de praticien(ne)s de l'arbitrage, tels que JURIS-ARBITRAGE.COM, ASA-CHALLENGE.COM, ENERGY-ARBITRATORS.COM, ICDR-ARBITRATORS.COM, IAI-ARBITRATORS.COM, ICCA-ARBITRATORS.COM, JAMS-ARBITRATORS.COM, VIAC-ARBITRATORS.COM, des sites payants, tels que Arbitrator Intelligence, GAR ART, consultation des listes d'arbitres nommés dans des affaires administratives par des institutions
- Méthode de désignation : contact avec l'arbitre potentiel(le) pour :
 - appréhender ses qualités et compétences
 - vérifier l'absence de conflits d'intérêt conformément aux Lignes directrices de l'IBA sur les conflits d'intérêt, et la disponibilité de l'arbitre avant de lui proposer officiellement
- Tout contact des parties avec l'arbitre potentiel(le) doit être dûment examiné avec leur accord et les échanges doivent être limités aux deux points ci-dessus.

3 **Désignation guidée la président(e) du tribunal arbitral par les parties :**

- Qui choisit : l'institution, les co-arbitres, et/ou les parties (il peut être utile de préciser dans la clause la possibilité pour les co-arbitres de consulter les parties)
- Critères de choix similaires à ceux applicables au choix guidé la co-arbitre (plus qualitatifs « managériaux »)
- Recherche de candidatures : méthodes similaires à celles employées pour le choix co-arbitre
- Méthodes de désignation : échanges de listes de noms avec ou sans ordre de préférence (voir par exemple, la procédure prévue à l'article 8(2) du Règlement CNUCIC), contact avec l'arbitre potentiel(le) limité à l'appréhension de ses qualités et compétences et la vérification d'absence de conflits d'intérêt et de sa disponibilité

4 **Désignation d'un(e) arbitre par des institutions arbitrales ou un juge :** possibilité pour les parties de faire des propositions de noms ou d'exprimer leur desiderata s'agissant des compétences de l'arbitre ou des modalités de sa désignation (par exemple, système de listes)

5 **Prendre en considération la personnalité et l'expérience des arbitres pour assurer un équilibre et une bonne dynamique au sein du tribunal**

POUR PLUS D'INFORMATIONS ALLER A ARBITRATIONPLEDGE.COM

This post discusses the main take-aways from the Checklist. First, parties must devote significant attention and reflection to the arbitrator selection process and avoid hasty decisions, from the drafting of the dispute resolution clauses to the appointment of arbitrators. The number of arbitrators or the selection method agreed upon in the clause may not be well-suited to the dispute once it has arisen. Revisiting the clause would be advisable, even though it would require agreement of the parties, which may be challenging to obtain once they are in dispute.

Second, when parties must nominate arbitrators, they should not only seek feedback from arbitration users or arbitration practitioners, but also refer to publicly — available directories and other resources available on websites such as [AAA](http://AAA.org), [ArbitralWomen](http://ArbitralWomen.org), [ASA](http://ASA.org), [BreakingThrough](http://BreakingThrough.org), [Energy Arbitrators \(ICDR\)](http://EnergyArbitrators.org), [IAI](http://IAI.org), [ICCA](http://ICCA.org), [JAMS](http://JAMS.org), [VIAC](http://VIAC.org), and the search page on [ERA Pledge](http://ERA Pledge.org), and to the feedback on arbitrators available on paid-access websites such as [Arbitrator Intelligence](http://Arbitrator Intelligence.org) or [GAR ART](http://GAR ART.org). Parties, co-arbitrators and arbitral institutions should promote gender, generational, cultural and legal diversity to broaden the pool of arbitrators and appoint qualified arbitrators who are less busy than the 'usual suspects'. Diversity improves performance, as it increases the pool of talent, skills, experience, and ways to approach and resolve problems. Recent statistics demonstrate that gender diversity has been increasingly a significant criterion considered by arbitral institutions when appointing arbitrators, rising from less than 10%

in 2010 to an average of 21 % in 2019.

Third, when appointing arbitrators, arbitral institutions and national courts must take into account parties' wishes regarding arbitrators' qualifications, whether agreed upon in the arbitration clause or after the dispute has arisen. Parties should state their preferences, especially when the clause is silent, to ensure that the required qualifications and experience are represented in the tribunal makeup.

Fourth, parties, co-arbitrators and institutions should seek to ensure a well-balanced tribunal and good dynamic within the tribunal, based both on objective and subjective selection criteria. For example, the respondent's choice of arbitrator will very likely be influenced by the profile of the arbitrator chosen by the claimant, who usually appoints first. For instance, if the claimant nominates a law professor, a respondent may be inclined to nominate a practising lawyer to ensure a balance of views on the tribunal, particularly if the respondent's case depends more on factual evidence than legal argument. Likewise, the choice of the co-arbitrators may have an impact on the profile of the president to be selected. In addition, the president must have a certain authority and the strength to avoid potential manipulation by biased co-arbitrators and must also be hardworking, to ensure a well-reasoned award. Moreover, arbitrators must be willing to listen to each other, and co-arbitrators, while ensuring a balance of views, must not play the role of advocate for the party who appointed them.

A copy of the Checklist is available

here in [French](#) and here in [English](#).

Description of the Survey

The Survey differs from the surveys conducted by Queen Mary University, as questions are more detailed and specific in connection with arbitrator selection and diversity in its broadest sense, including gender diversity. It is addressed to counsel, in-house counsel and their respective professional organisations based in France.

Respondents are invited to indicate the type of entity they represent in taking the Survey, including its familiarity with designating arbitrators. They must provide information on the methods they use for selecting arbitrators and rank them in order of priority.

Two questions concern list-based selection methods, specifically (i) whether the respondent's preference is to ask an arbitral institution to provide a list of candidates that fulfil the parties' criteria, and (ii) where parties are to draw up a list of candidates, which criteria they consider most important, such as nationality, gender, cultural background, place of residence, previous experience as arbitrator, knowledge of the applicable law or industry. Respondents are requested to rank and give each criterion a mark to assess its individual significance.

Another question addresses ways to improve arbitrator selection methods, mainly from the point of view of gender diversity. Respondents must choose among several selection methods, ranging from lists of candidates supplied by arbitral institutions and anonymised CVs which may generally

result in more female candidates being chosen (see Lucy Greenwood, “Could “Blind” Appointments Open Our Eyes to the Lack of Diversity in International Arbitration?”, TDM, Vol. 12, issue 4, July 2015), to “blind” appointments where candidates are not told which party has chosen them in order to ensure the candidate’s complete independence and impartiality.

The next question considers factors that, in respondents’ opinion, are most conducive to the satisfactory conduct of the arbitral proceedings, such as

3. homogeneous or diverse legal backgrounds,
4. gender diversity,

5. previous experience sitting in the same tribunal (or lack thereof),
6. different professions (or the opposite) or
7. the fact they belong to the same (or a different) generation.

The last two questions enquire about (i) the existence of diversity programmes implemented at the respondents’ firms, their results and whether they have an impact on arbitrator selection, and (ii) the impact that diversity in its different aspects may have had in the success of the firm. The goal of the authors of the Survey is to have as many responses as possible in order to understand and analyse arbitration users’ motivations

and the methods they apply when selecting arbitrators, as well as their attitudes towards diversity in the constitution of arbitral tribunals. This, in turn, may increase the collective awareness and reflection on arbitrator selection methods and how they should better take into account the key question of diversity.



Click here to take the Survey.

Your input will be extremely valuable. The text of the Survey is available [here](#) for information and you can take the Survey by [clicking here](#).

Launch of the ERA Pledge Corporate Guidelines!

By Dana MacGrath, ArbitralWomen
President and Omni Bridgeway
Investment Manager and Legal Counsel
26 November 2020

We are pleased to report on the latest initiative by the ERA Pledge, the launch of the Pledge Corporate Guidelines on 26 November 2020. The Pledge Corporate Guidelines are a set of guidelines specifically designed for corporates to use to implement the diversity aims of the Pledge. The Pledge Corporate Guidelines can be found [here](#) on the ERA Pledge website.

The Pledge Corporate Guidelines were drafted by the members of the Pledge **Corporate Sub-Committee**, led by Co-Chairs **Samantha Bakstad** of BP and ArbitralWomen member **Sylvia Noury** of Freshfields, together with Secretary **Ashley Jones** of Freshfields. The corporate sponsors of the Pledge Corporate Guidelines include **Airbus, AngloAmerican, BP, Burford Capital, Chevron, ConocoPhillips, Omni Bridgeway, Shell Corporation** and **Vannin Capital**.

The Pledge Corporate Guidelines recognise that diversity is a critical lever for business success. Additionally, increased diversity improves the

effectiveness of arbitral tribunals and the quality of outcomes by bringing a greater range of perspectives to bear on the decision-making process.

The Pledge Corporate Guidelines acknowledge that corporates may be less familiar with all available diverse arbitrator candidates than arbitral institutions and that some corporates may rely on arbitrator candidate lists provided by external counsel. By signing the Pledge, a corporate can demonstrate its support, including to its external counsel, for a broader and more gender-balanced arbitrator selection process.

Importantly, the Pledge Corporate Guidelines aim to make it easier for corporates to implement its pledge to support diversity by providing specific factors for corporate counsel to consider when involved in the appointment of arbitrators, the selection of counsel teams for arbitration and even in the workplace.

When involved in the appointment of arbitrators, The Pledge Corporate Guidelines encourage corporates to:

- Consider appointing women as arbitrators on an equal opportunity basis
- Try to request at the outset of the

arbitrator selection process that external counsel apply the principles embodied in the ERA Pledge when drawing up a list of potential candidates

- Try to ensure any list of potential arbitrator candidates includes a fair representation of women
- Endeavour to call out any non-diverse list and encourage further consideration be given to equally qualified female candidates who could be included in the list
- Consider using the Pledge Arbitrator Search function (and other available search tools) to help identify qualified female arbitrator candidates
- Try to include a fair representation of women when proposing candidates for Chair and encourage the nominated arbitrators and other parties in the proceedings bear the aims of the ERA Pledge in mind when considering the appointment of the Chair
- Make efforts to track and report the proportion of female arbitrators appointed and, where appropriate, share this diversity data internally
- Consider adopting internal targets,

remarks: *While the number of women being appointed to arbitral tribunals is steadily improving, generally this is due to increasing appointments by arbitral institutions. The ERA Pledge, with the assistance of a Sub-Committee of corporate sponsors committed to gender diversity, is issuing these Corporate Guidelines as part of its drive to boost the number of women appointed to tribunals by the parties, where there is still much room for improvement. We're grateful for the support of our Corporate Sub-Committee and hopeful that these practical guidelines will help move the dial."*

The members of the **Pledge Corporate Sub-Committee** [↗](#), co-chaired by **Samantha Bakstad** and ArbitralWomen member **Sylvia Noury**, together with Secretary **Ashley Jones**, include ArbitralWomen Board members **Dana MacGrath** and **Alison Pearsall**, ArbitralWomen members **Yasmin Mohammed** and **Giulia Previti**, together with **Arjun Agarwal**, **Gwendoline Brooker**, **Sapfo Constantatos**, **Karl Hennessee**, **Kelly Herrera**, **Nav Juty**, **Beatriz Saiz Marti**, **Patrizia Masselli**, **Sarah Walsh**, **Kate Wilford** and **Thomas Wright Jr.** **Ashley Jones** is Secretary to the Corporate Sub-Committee.

Founder and co-chair of the Pledge's Global Steering Committee and co-chair of the Pledge Corporate Sub-Committee, **Sylvia Noury**,



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SPEAKING AT AN EVENT?

If you or other ArbitralWomen members are speaking at an event related to dispute resolution, please let us know so that we can promote the event on our website and mention it in our upcoming events email alerts!

If you wish to organise an event with ArbitralWomen, please send the following information to events@arbitralwomen.org:

- Title of event or proposed event
- Date and time
- Names of ArbitralWomen members speaking or potential speakers
- Venue
- Flyer or draft flyer for approval by ArbitralWomen Executive Board
- Short summary of the event for advertising purposes
- How to register/registration link

ArbitralWomen thanks all contributors for sharing their stories.

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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:

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- Ability to [obtain referrals](#) of dispute resolution practitioners
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- 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.