

ArbitralWomen Newsletter



Uniting and promoting women in dispute resolution

www.arbitralwomen.org

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Happy Anniversary to Mute Off Thursdays!

Congratulations to the co-founders of Mute Off Thursdays, who include ArbitralWomen Board member **Gaëlle Filhol** together with ArbitralWomen members **Emma Vidak Gojković**, **Catherine Anne Kunz** and **Claire Morel de Westgaver**. Mute Off Thursdays is an online forum of women designed to help mid-level to senior women in arbitration exchange knowledge and stay connected to the arbitration community through a weekly 30 minute virtual meeting. The photo above is of the many female practitioners, arbitrators and academics who have presented at the weekly meetings in the first year. For more information on Mute Off Thursdays, you can read about it [here](#).

In this edition of the Newsletter, we share event reports on alternative dispute resolution conferences and programmes in January and February 2021 together with much more, outlined further in the President's Column.

President's Column

In this edition, we start with

an interview by ArbitralWomen member **Mihaela Apostol** of Professor **Crenguța Leaua**, a leading arbitration practitioner and arbitrator with vast experience in disputes involving Eastern European parties and involvement with several arbitral institutions.

We then describe **Vinson & Elkins' Women's Initiative**, which includes internal events and initiatives focusing on women, client events, and programmes in furtherance of its wider commitment to diversity. ArbitralWomen Vice President **Louise Woods** contributes substantially to the firm's diversity work.

We also include a report by ArbitralWomen Board Member **Maria Beatriz Burghetto** on the 40th Session of the UNCITRAL Working Group III (ISDS) in February 2021, that addressed selection and appointment of adjudicators in a standing mechanism and a proposed appellate mechanism.

Thereafter we publish a series of event reports on virtual alternative dispute resolution conferences and programmes in January and February 2021. These include *The Schiefelbein Global Dispute Resolution Conference* on 15 January, submitted by ArbitralWomen member **Victoria Sahani**; *The Virtual Inauguration of Racial Equality for Arbitration Lawyers (REAL)*, co-chaired by ArbitralWomen Board Member **Rekha Rangachari**, ArbitralWomen Member **Crina Baltag** and **Kabir Duggal** on 18 January (Martin Luther King Day, Jr. – a national holiday celebrated in the United States to honour Dr. King's work to promote racial equality); *Empowering People to Progress their Careers* on 20 January, submitted by ArbitralWomen member **Brianna Young**; *Arbitral Parents* on 28 January, submitted by **Rebecca Paradellas Barrozo**; *Delos TagTime Series, Session 3, Episode 2: Julie Bédard on 'Who Decides: Courts or Tribunals? Arbitrability in International Arbitration'* on 3 February, submitted by **Anne-Marie Grigorescu**; *ICC YAF: Equality of Parties before International Investment Tribunals* on 10 February 2021, submitted by ArbitralWomen member **Alina Leoveanu**; *Resolving Art Disputes Through the New Court of Arbitration for Art* on 10 February, submitted by ArbitralWomen member **Nadia El Baroudi-Kostrikis**; *Women in Mediation JAIAC Coffee Time* on 17 February, submitted by ArbitralWomen Board member **Rose Rameau**; *Mind the Gap: A Fresh Look at Procedural Gaps in Institutional Rules* on 18 February, submitted by **Madeleine Thorn**; *CIArb: Diversity, Equity and Inclusion* on 23 February, submitted by ArbitralWomen member **Katherine Simpson**;



Refinement and Execution of Roles in Arbitration: Analysis of International Standards on 23 February, submitted by ArbitralWomen member **Cecilia Flores Rueda**; and *9th ICC MENA Conference on International Arbitration* on 24 February, submitted by **Hannah Dennehy**.

While the events mentioned above were virtual, we now are aware that some are planning hybrid or in-person alternative dispute resolution events as we go forward into 2021. In recognition of this development, ArbitralWomen has lifted the global ban on supporting in-person events, recognising that some

parts of the world have re-opened in part or fully and are holding in-person events. We are now amenable to providing non-financial support to gender balanced in-person alternative dispute resolution events on a case-by-case basis.

The decision as to whether to provide support for an alternative dispute resolution hybrid or in-person event is at the discretion of the ArbitralWomen Board. Any such decision will be informed by the health conditions in the location of the event and commitment by the organisers to plan and hold the event in compliance with local applicable laws, rules, regulations and recommended best practices. We look forward to seeing more of you in-person as the world re-opens and the global economy rebounds.

Finally, for all ArbitralWomen members pivoting professionally coming out of the pandemic, please remember to let us know about your new professional path at news@arbitralwomen.org so that we may promote it in our News Alerts and social media (and remember to update your ArbitralWomen bio too!). We are incredibly impressed by the perseverance of our members professionally and personally.

In closing, we recognise that May is **Mental Health Awareness Month** — and a reminder that there is much emotional suffering that goes undiscussed, particularly this year (and last) in the context of the global pandemic and economic downturn. We hope that ArbitralWomen members benefit from our professional community's support in times of need and are assured they "are not alone" (this year's Mental Health Awareness theme) as well as being celebrated for professional achievements and successes.

*Dana MacGrath, ArbitralWomen President
and Independent Arbitrator*

Women Leaders in Arbitration

Professor Crenguța Leaua

ArbitralWomen member Mihaela Apostol recently had the opportunity to interview Professor **Crenguța Leaua**. The interview covered the career evolution of Crenguța, the changes that arbitration faced through time and the interplay between new technologies and dispute resolution.

Crenguța is a forefront arbitration practitioner with vast experience in disputes involving Eastern European parties. She has been leading her own practice for 17 years as a founding partner of *Leaua Damcali Deaconu*

Paunescu – LDDP, a Romanian law firm initially set up as an arbitration boutique, based in Bucharest. She has experience as counsel, arbitrator, professor and has been also involved in multiple roles in arbitral institutions: She is a former Vice-president of the ICC International Court of Arbitration and current Board Member of Silicon Valley Association and Mediation Center (SVAMC). Crenguța has a great interest in legal issues related to new technologies such as blockchain and Artificial Intelligence ('AI').

Before we speak about your career in arbitration, can you please tell our readers how you started to be interested in international dispute resolution?

I started my career 25 years ago as a litigation lawyer, but I was always interested in a niche type of disputes. Hence, I chose the topic of intra-corporate disputes for my PhD thesis. Whenever I got involved in that kind of disputes, I would try somehow to calm down the dispute between shareholders and/or the directors of the company, to help them focus on their common interests. Without knowing it, I was actually practising mediation, even if, at that time, there was little information/training in Romania about mediation.

Soon after, I was lucky enough to work as a young partner in a law firm which was headed by one of the most experienced Romanian arbitrators, who directed me further towards arbitration. He had a great deal of experience in disputes involving commercial state-owned entities, given the particularities of the jurisdiction for international commercial disputes during the communist regime in Romania, which always directed such disputes towards international arbitration.

Then, around 2005, when I was in my early 30s, I decided to start my own arbitration boutique, which was unique at that time in Romania. My first mandates were the first Romanian arbitration case at the World Intellectual Property Organization ('WIPO'), then an ICC case, then an ICSID case and from there, things evolved naturally. New partners joined the firm and with them new areas of expertise were added over time so

that the firm is currently a full-service law firm.

You have over 17 years as head of your own law firm, what was the most satisfying achievement and what challenges did you face?

I was always happy when people decided to join the firm, and I was always very glad for everybody who wanted to work with us. When you start a business, be it a law firm or something else, you believe in your project, but the fact that others believe in the project too is something extremely encouraging, and I am very grateful for all who did so.

But then, if I am speaking about challenges, unfortunately, they come from the same human relationships. It is not always easy to strike a balance between the personal nature of the relationship between the members of a team and what is wise and economically feasible for the business.

So, I think that both moments of happiness and of sadness, or success and pitfalls, are always related to the people who surround you.

You have an impressive career of over 25 years practising as counsel, arbitrator, professor and you have been involved in multiple roles in various organisations (Vice-president of the ICC International Court of Arbitration, Board Member of SVAMC, to name a few). How has the field changed through time?

I have witnessed tremendous changes. I would mention technology first. In the beginning, I used a typing machine to draft the requests for arbitration, and even carbon paper, and





International Federation of Commercial Arbitral Institutions meeting, 2004 (Professor Leaua was representing the Romanian Court of International Arbitration)

...speaking about diversity, I remember that in the 1990s, in a 100 people conference we were about five to ten women maximum. In terms of geographical diversity, there was a very big discrepancy between the visibility of the arbitration experience in various countries.

from that to online hearings nowadays and platforms, it is a huge technological advance.

Another very significant change –technology wise– that I saw was the development of databases, which are a truly fantastic tool! In the beginning, when I could not find a resource on a specific topic in my library, I would write to people that I met at conferences, and I would send them letters, I was not even sending them emails, I was writing letters asking if they had a book on that specific topic or if they had ever encountered that situation before and how they would suggest it should be approached. But when databases appeared, with all the information so easily accessible, it felt like the sky was the limit, or, I would say, the cloud was the limit.

Then I noticed a very important development in terms of arbitral institutions. In the beginning, they were mainly organising and providing administrative services to help the parties with the arbitration proceedings, with little focus on the economics of the phenomena – the mindset of arbitral institutions was rather turned towards cooperation. Then things changed, towards identifying their competitive advantages: they started to be more proactive and make efforts to be first in potential users of arbitration choices. It was a shift in mentality that I witnessed, and in the end, although

it accelerated the changes of arbitration rules and services might have been challenging to counsel assisting parties in arbitration, it proved to be a very good one in the sense that, it was more innovative, and indeed, it placed arbitral institutions in the position to be able to follow more closely the evolving needs of the users.

Also, when it comes to the arbitration community, the changes are amazing! I remember 25 years ago there were a few conferences per year. Now, it is almost impossible to keep track of all the events happening around the world. Likewise, the language spoken at the conferences has diversified over the years. Also, speaking about diversity, I remember that in the 1990s, in a 100 people conference we were about five to ten women maximum. In terms of geographical diversity, there was a very big discrepancy between the visibility of the arbitration experience in various countries. At that time, I was the only



Romania Embassy in Paris
Event for the book launching of Arbitration in Romania, A Practitioner's Guide (Crenguta Leaua & Flavius A. Baiaș des.), 2016

woman from Romania attending international conferences, always carrying the name of my country, introducing it always, whenever I was introducing myself, because I was trying to make the country more visible and known as an arbitration market/venue and country of origin of arbitration practitioners.

You are an alumnus of the Emerging Leaders executive education program of John F. Kennedy School of Government at Harvard University and you completed a course on Cryptocurrency & Disruption from the London School of Economics. How important is it to continue studying even if you are an experienced practitioner, and how did those programmes help you to advance in your career?

Achieving a high professional level in the legal profession, I thought that what I needed the most was to broaden my horizon beyond the law itself. So, I headed towards economics and leadership of large organisations.

The course at Harvard was about innovative leadership in continuously changing social and economic environments, in both the public sector and in large private organisations. Once I understood the power of the trial-and-error process in the evolving systems, this helped me to develop a better understanding of the specificity of the new technologies and new industries, based on innovation.

Then, the London School of Economics course proved to be really helpful, because it explained the basics of the blockchain ecosystem and the new disruptive business models within, the phenomena of cryptocurrency, of smart contracts and tokenisation of assets. It basically gave me a structure to understand the economics of these phenomena. The blockchain industry was a very good example of innovation, of trial-and-error process in developing disruptive business models. It was also something amazing for me to see how the changes brought by this industry are advancing faster than the legislation.

These courses added a new dimension to my legal training, they taught me the importance of combining the ant's eye view, looking at the little details very closely, from one perspective only, the legal perspective, with the bird's eye view, seeing everything from the overall perspective, the socio-economic perspective. If you can zoom in and zoom out, as you need, you get to a clearer picture of the situation, and that can be a genuine development for a lawyer who wishes to truly add a new dimension to their career.

What are the things less known about the Eastern European arbitration practitioners that you would like to share with our readers?

I would say that Eastern Europe is overlooked, and the practitioners there feel that the hard way. In terms of professional value, however, there is a wide number of excellent arbitrators and counsel in the region. They are of the highest standard that you can imagine. Unfortunately, they are not invited as frequently to international conferences, in various working

I would say that Eastern Europe is overlooked, and the practitioners there feel that the hard way. In terms of professional value, however, there is a wide number of excellent arbitrators and counsel in the region.

groups, and they are not as frequently seen as suitable for disputes outside their geographical region, compared to those from the countries with tradition in international arbitration. I could say that they are considered nationally suitable or, at the most, regionally suitable, although there is absolutely nothing preventing them to act internationally. When they do act internationally, they act absolutely honourably and with impeccable professionalism. This is creating a certain discrepancy in terms of the value versus the recognition of the value. Because of this, younger practitioners feel that they should change their location to other countries, in order to get better professional opportunities. It gets back to the topic of geographical diversity in international arbitration.

I noticed that you have a special interest in new technologies and you have been involved in a couple of tech initiatives: you are a Board Member of SVAMC, chair of the SVAMC initiative on arbitration, mediation and blockchain-based transactions; you assisted the Romanian legislator with drafting blockchain regulation. Can you share your views on how arbitration can benefit from the use of technology?

Arbitration will have a lot of help from the newly developed technological tools, everything that can be optimised will be optimised, and everything that can be sped up will be sped up: software in terms of databases service, intelligence searching tools, translation, organisation of information, virtual reality, etc. Automation will also find its role. So, there are a plethora of technologies that can bring a positive impact to arbitration.

However, the key question is the reversed one: what can arbitration do for the tech industry? This is one of the points that we aim to explore at the Silicon Valley Arbitration Mediation Centre with the initiative that I am chairing and where, together with my colleagues, we are all working in the direction of looking at what is needed for arbitration

My feeling is that arbitration will eventually become the alternative to AI standardised dispute resolution systems, and it will be the option of having a human-based dispute resolution, as opposed to AI dispute resolution, it will be the opt-out from the AI-based court proceedings.

and mediation to better solve the disputes arising out from blockchain-based transactions. Namely, to which extent arbitration/mediation, as they currently are, can be useful to the needs of the industries that are new and based on new economic and business models, and what potentially needs to be further improved.

If you want to respond to the needs of the new industries, you have to try to see the world through their eyes, to understand their needs, and then adapt at least at a minimum. For example, if the new business models are based on an online platform, the arbitration provider should match also with the online platform, to allow the information to flow from one point to the other. At a minimum, you have to allow to import into the arbitration the data about evidence from the platform, and then to export the arbitration's outcome to the platform. If you do not have the tools for such interface, you do not answer the needs of the industry, as simple as that; you do not integrate the arbitration service with the user. So, what I think that this new technology will do to the arbitration world is to provoke a very serious self-assessment and improvement.

However, I do not think in the future arbitration will be based only on technology. For example, AI will be a very good technological tool to solve efficiently disputes that are of a certain level of complexity and particularly the standardised type of disputes, with repetitive patterns. In reality, the most suitable to use AI are the courts of law, because of their big data, big numbers, and their statistics that are immense, allowing development of patterns, as opposed to the alternative, which is the case-by-case adapted arbitration procedure. At that moment, you will have to think about what arbitration is an alternative to. My feeling is that arbitration will eventually become the alternative to AI standardised dispute resolution systems, and it will be the option of having a human-based dispute resolution, as opposed to AI dispute resolution, it will be the opt-out from the AI-based court proceedings.

You have met future arbitration practitioners from around the world as part of your role as a professor at the Bucharest University of Economic Studies – Faculty of Cybernetics, Statistics and Informatics in Economy, at the Bucharest University Faculty of Law, a visiting scholar at the Columbia Law School (New York) and as a guest lecturer for the students of Science Po (Paris), Georgetown Law (Washington D.C.) and Washburn University (Kansas). Based on your interactions with your students, how do you see their future in international dispute resolution?

I think that the new generation will have a novelty on their agenda: the continuous technical education, to be added to the already existing concept of continuous legal education. In solving the client's problems, it will not be enough for counsel to find the right path through the law, but counsel will have to do so with technical tools. They will need to understand and use those technical tools.

Also, I can see that, currently, it is a huge opportunity for networking and exposure, which was not available in the past. Now you have easy access to information and data about other people, their skills and their abilities, their professional record. The offer is wide in the open, as opposed to the limits of the offer of services which was given by the circle of people knowing each other, 20 or 30 years ago. The same reality also creates a world of open and really tough competition because you are no longer limited by the territory you live in and people you compete with. But I feel that, in the long term, the most interesting evolution will be that this wide data visibility will bring more value than ever to personal contacts. Because once we have that maximum transparency, when the objective data about all will be equally visible, the only difference one can add is the personal contact. So, in a very surprising way, I believe the peak of the transparency will bring back the value of human trust, person to person.



Silicon Valley Arbitration and Mediation Centre Conference at FIU Miami, 2019

Women's Initiatives In Their Workplace

Vinson & Elkins' Women's Initiative: A Wholistic Approach to Success



Left to right: Louise Woods (Partner, V&E and AW Vice President), Scott Wulfe (Managing Partner, V&E), Trina Chandler (Partner and Financial Review Chair, V&E); Caroline Blitzer Phillips (Partner, V&E)

How It All Started

The Vinson & Elkins' (V&E) Women's Initiative launched in 2000, and was one of the first of its kind in the legal community. It started as a result of a suggestion by three women partners who were interested in developing a comprehensive approach to the recruitment, retention, and advancement of women at V&E.

Since its inception, V&E's Women's Initiative has been supported from the highest levels of the firm — with Managing Partner **Scott Wulfe** and Financial Review Chair and Partner **Trina Chandler** currently serving as firmwide Co-Chairs. Each office also has at least one woman partner as office lead for the Women's Initiative, and the office groups meet regularly to share ideas, discuss how to implement efforts at a cross-office level, and ensure that each team has the support it needs to hire, retain, and promote female attorneys at V&E. Offices often combine efforts to produce greater support and to share ideas. For example, the London office

works regularly with V&E's Middle East offices on Women's Initiative events and projects, as well as on its broader diversity and inclusion initiatives.

V&E's Women's Initiative efforts include involvement of senior management, partners, counsel, and associates throughout the firm. As of this year, participation in the firm's diversity and inclusion programmes, including the Women's Initiative, will count towards associate bonus considerations, underlining the importance of these types of initiatives within the firm.

While the activities of the Women's Initiative are designed to support women attorneys, having gender diversity has positive impacts across the firm. V&E encourages and welcomes its male attorneys into the conversations around the success of women; and as allies, men are a critical part of the solution to advancing and retaining women. V&E's Women's Initiative has also been the catalyst for a number of programmes and policies that benefit all at the firm.

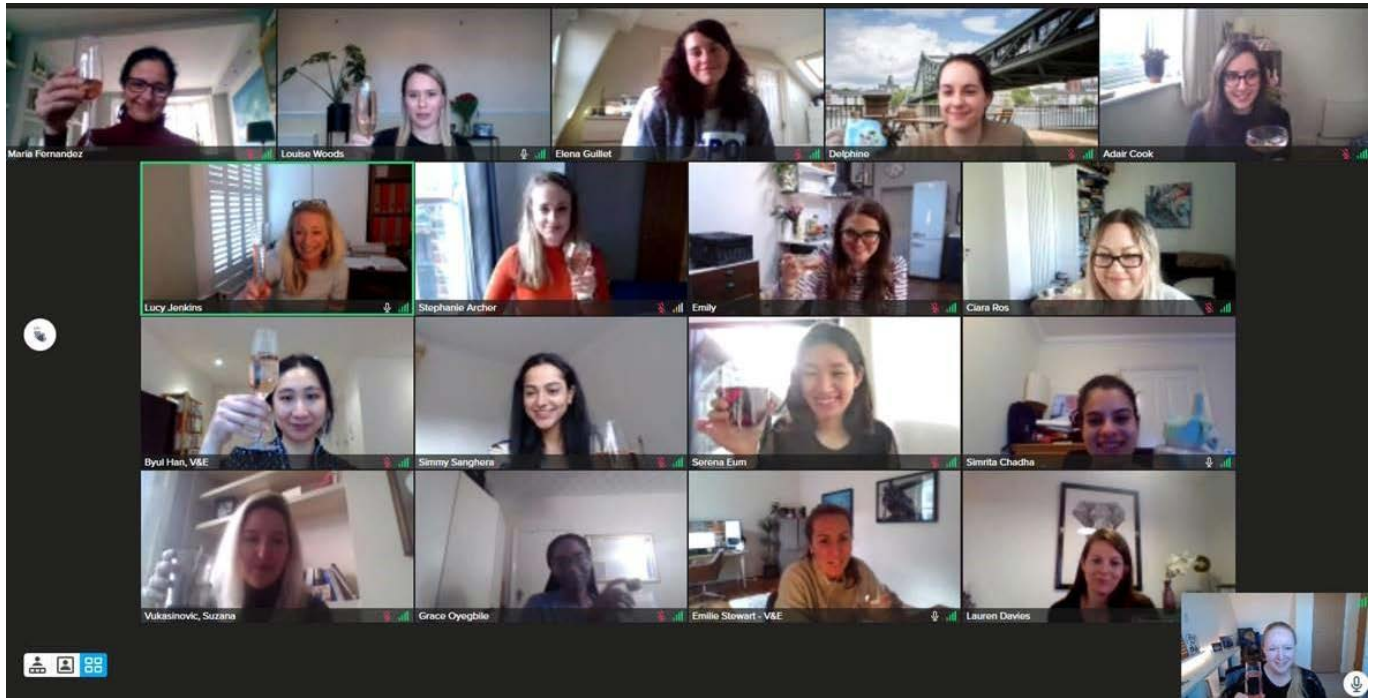
Recognizing that a broad range of diverse perspectives is paramount to

providing the best solutions for its clients, V&E's diversity structure includes a global Diversity Council, affinity groups such as the LGBTQ+ Alliance, Women of Colour Network, Working Parents Group, Asian Affinity Group, and Black Attorneys Network. V&E's D&I Executive Committee of leadership partners serve as the group that oversees the firm's initiatives.

Internal Events and Initiatives Focusing on Women

Cross-Office Mentoring Expands Networks

In 2020, the Women's Initiative created a mentoring programme for female senior associates and counsel in the London office to encourage cross-office and cross-practice connections. Each attorney is thoughtfully matched with a V&E partner in one of the firm's U.S. offices, and the pairs meet monthly to discuss topics from business development plans, international work opportunities, speaking opportunities and conferences, to the path to promotion,



Top to bottom, left to right: Maria Fernandez (Paralegal, V&E); Louise Woods (Partner, V&E); Elena Guillet (Trainee, V&E); Delphine Troquet (Paralegal, V&E); Adair Cook (Trainee, V&E); Lucy Jenkins (Partner, V&E); Stephanie Archer (Associate, V&E); Emily Pittman (International Practice Director, V&E); Ciara Ros (Senior Associate, V&E); Byul Han (Senior Associate, V&E); Simmy Sanghera (Associate, V&E); Serena Eum (Associate, V&E); Simrita Chadha (Associate, V&E); Suzana Vukasinovic (Associate); Grace Oyegbile (Trainee, V&E); Emilie Stewart (Partner, V&E); Lauren Davies (Counsel, V&E); Grace Gibson-Venner (Talent Manager, V&E)

and general career progression. The programme is now in its second year, with five participants from the London office benefitting from a mentor. One of the participants from 2020, **Emilie Stewart**, a lawyer specialising in Finance, was promoted to partner in January 2021. 'Partners in other offices will typically have a very different network within the firm than you; this scheme helps you leverage their network,' shared Emilie.

Afternoon Tea Provides Social Connections

One example of an internal event that V&E's Women's Initiative held recently was a delicious afternoon tea and champagne toast to celebrate the promotion of Emilie Stewart to partner. Women attorneys in the London and Middle East office met via Zoom to eat their way through cakes, scones, and savoury pastries and to toast Emilie's success.

Parent Mentoring and Working Parent Groups Support Mothers and Fathers

V&E's 'New Parent Mentor Programme' is part of the firm's wider efforts to support working parents. Over the years, the Women's Initiative has generated many new policies, benefits, and programmes concerning both

lawyer development and work-life management, that benefit women and men, including the New Parent Mentor Programme which has become critical to helping new parents navigate the personal and professional demands of being a working parent.

Another important aspect of championing diversity across the firm is providing continuous support to V&E's working parents, especially in this new 'pandemic world.' V&E's Working Parents Group launched age-based discussion forums which have proven to be insightful, with parents sharing resources and ideas with one another, including home-schooling, sleep training, and internet safety. For additional resources, V&E's London office is a member of CityParents, an external organisation for working parents offering webinar training, support groups, and networking opportunities.

Sunset Yoga Provides a Mindfulness Break

Prior to the pandemic, the Women's Initiative hosted events such as a sunset yoga class and sound bath, followed by cocktails, which was attended by both men and women attorneys. The event encouraged finding a work-life balance and relaxation, taking full advantage of the spectacular views from the London office,

overlooking the City and the River Thames.

Coffee Breaks Continue Virtually

In the London and Middle East Offices, all women attorneys are invited to a bi-monthly 'coffee/tea break' to discuss work, upcoming events, business development initiatives, and personal achievements. Over the past year, these breaks have moved online to allow these catch-ups to continue. The virtual connections also provide an opportunity for female attorneys to catch up, and build their network, with other attorneys across different departments within the firm.

Subcommittees Create a Variety of Initiative Streams

V&E considers it important to the success of the Women's Initiative to ensure multiple attorneys get a chance to take ownership of Women's Initiative's projects, and that the work does not exclusively fall on a small group. Subcommittees divide the efforts such as monthly emails to keep members apprised of potential events, courses and networking opportunities to attend, organisation of client focused events, engaging speakers for internal and external events, and preparing summaries of key gender diversity articles or events for the wider office.

Client Events to Connect

V&E hosts various client events targeted at women in different industries.

Candles, Cocktails and Conversations

To celebrate International Women's Day, V&E's Women's Initiative hosted 'Candles, Cocktails and Conversation'—its inaugural virtual client event—with an intimate group of female clients. The candle making workshop was taught by Lucy Heale, founder of the London Refinery, with cocktails and non-alcoholic beverages. Partner Louise Woods gave a moving speech on the importance of diversity in the workplace and some of the key issues facing women in the world today. One of the silver linings of working virtually is the increased scope to meet with clients from across the globe, ranging from the UK to Russia, Peru, the USA and more.

Champagne Tasting Event

One of V&E's most popular in-person events was an evening with Veuve Clicquot in the London office. The collaboration commenced with a talk on the history of the winery and Madame Clicquot's key role as a pioneering businesswoman in making Veuve the household name it is today. V&E attorneys and clients spent the remainder of the evening with a guided tasting of various vintages and engaging in conversation, overlooking the wonderful views of Tower Bridge and the City.

Movie Screenings

The Women's Initiative hosted screenings of movies such as 'On the Basis of Sex' and 'Hidden Figures,' to celebrate successful women in film. We look forward to continuing the series when social distancing rules are relaxed and in-person events are permitted again.

V&E's Wider Commitment to Diversity

V&E's Women's Initiative is part of the firm's broad commitment to diversity, including these examples:



Candle – and cocktail-making kit from London Refinery



Top to bottom, left to right: Louise Woods (Partner, V&E), Louise Fischel-Bock (Associate, V&E); Lucy Jenkins (Partner, V&E), Lauren Davies (Counsel, V&E), Nadine Amr (Senior Associate, V&E), Alice Brogi (Counsel, V&E), Lucy Heale (London Refinery)

Unconscious Bias Training for All

In 2020, a firm-wide mandatory unconscious bias training programme was launched for all attorneys and staff across the firm, facilitated by external experts from Fletcher Consulting. The training sessions were interactive, encouraging honest dialogue in small breakout groups, and addressed difficult questions about inclusivity and equity.

Additional diversity programmes the firm hosts include topics such as the multi-generational workforce, the history of systemic racism, the impacts of racial trauma, and how to be a powerful ally.

achieve

One of the initiatives that V&E's London Diversity Council is most proud of is the 2020 launch of 'achieve.'



Top to bottom, left to right: Afzaal Abidi (Trainee, V&E); Students at Bishop Challoner School; Bradley Lindsay (Trainee, V&E); Ciara Ros (Senior Associate, V&E); Students at Bishop Challoner School; Mr M. Larkin (no picture, teacher at Bishop Challoner School)

Partnering with Bishop Challoner Federation of Schools, located in Tower Hamlets, this mentoring programme for students studying for their GCSEs (aged 14-16) and A-levels (aged 16-18), includes a focus on careers in law, and pairs each participating student with two attorneys. Monthly meetings will commence in the summer term and attorneys help with training such as negotiation skills and commercial awareness as well as discussing career options, A-level and university choices, and work management skills. V&E's London office also raised more than £3,500 in cash donations for the purchase of laptops for students who did not have a device for the virtual learning environment.

Book & Movie Club – From *Bridgerton* to *Hood Feminism*

In 2020, the London Diversity Council

hosted its first Book Club, and has continued monthly discussions covering books, films, and shows that discuss or are important to diversity. Most recently, attorneys met to talk about the breakout hit *Bridgerton* and the use of 'colour blind' and 'colour conscious' casting, as well as the portrayal of women generally, in period dramas and the media. Other examples include 'Natives: Race and Class in the Ruins of the Empire' by Akala; 'Why I'm No Longer Talking to White People About Race' by Reni Eddo; and in honour of Women's History Month, the March event focused on the book 'Hood Feminism: Notes from the Women that a Movement Forgot' by Mikki Kendall.

Mansfield Rule Certification

In 2020, V&E signed on to pursue 'Mansfield Rule' certification, a pro-

gramme which seeks to boost the representation of traditionally under-represented lawyers by broadening the pool of candidates for opportunities and increasing the transparency of internal processes. While the certification programme is currently U.S.-based, the impact of the program permeates across the firm, influencing areas such as client pitch opportunities, partner promotions, lateral hiring, and leadership roles.

Submitted by Louise Woods, ArbitralWomen Board member and Vice President; Partner, Vinson & Elkins LLP, London, UK; Ciara Ros, ArbitralWomen member; Senior Associate, Vinson & Elkins LLP, London, UK; Sophie Frelove, ArbitralWomen member; Associate, Vinson & Elkins LLP, London, UK; Louise Willneff, ArbitralWomen member; Associate, Vinson & Elkins LLP, Dubai, UAE

V&E's Recent Achievements

V&E's recent notable accomplishments in promoting greater diversity and the role of women include:

2021 New Partner class is 60% women and 20% are attorneys from traditionally underrepresented backgrounds in the law

Since 2015, 40% of new partners in London are women

London lateral hires since January 2020 are all attorneys from traditionally underrepresented backgrounds in the law

Increased women in leadership roles in 2020

Improved retention of women and diverse lawyers in 2020

For its efforts in advancing women's roles in the legal industry, V&E has received external praise and several accolades. Among them are:

- Named a "Best Law Firm for Women" for nine years by the magazine *Working Mother*;

- Named a "Top 10 Law Firm for Family Friendliness" in 2019 by Yale Law Women; and
- Received the "Top Performers Award" for commitment to diversity in 2020 from the Leadership Council on Legal Diversity.

Working Group III (ISDS Reform) 40th session, 8–12 February 2021, in Vienna and Online

The 40th session of the United Nations Commission on International Trade Law (UNCITRAL) Working Group III ('Working Group') on ISDS Reform was chaired by **Shane Spelliscy** (Canada), with **Natalie Yu-Lin Morris-Sharma** (Singapore) as Rapporteur.

Attendees included 55 Working Group State members, 33 observer States, in addition to the European Union and the Holy See, 9 intergovernmental organisations and 60 non-governmental organisations, including ArbitralWomen, through its delegate, **María Beatriz Burghetto**.

The Working Group dealt with



María Beatriz Burghetto

two of the three issues included in its agenda (Selection and appointment of adjudicators in a standing mechanism (A) and Appellate Mechanism (B)) and had to postpone the treatment of the draft code of conduct ([A/CN.9/WG.III/WP.201](#)) and the topic of enforcement of awards to a future session (see the report on the session: [A/CN.9/1050](#)).

The Working Group was not going to adopt any particular reform option at this stage, given that there are diverging views on the available options and that not all delegations have taken final positions on the issues under discussion.

A. Selection and appointment of adjudicators in a standing mechanism ([A/CN.9/WG.III/WP.203](#), paras. 41–72):

The Working Group dealt with the concerns of lack or apparent lack of independence and impartiality, and also of diversity, of decision makers in ISDS; the question of the adequacy, effectiveness and transparency of the disclosure and challenge mechanisms available under many existing treaties and arbitration rules and the mechanisms for constituting ISDS tribunals ([A/CN.9/964](#), paras. 83, 90, 98 and 108), in the context of a standing mechanism.

Discussion on all these issues appeared however premature to some participants, given that there is no consensus on the choice of the appeal mechanism, i.e., a standing body or the current *ad hoc* system. Some State members envisage a first tier *ad hoc* tribunal with an appellate standing body (e.g., China's submission: [A/CN.9/WG.III/WP.177](#)). The European Union is a strong supporter of the permanent court option with first and second (appellate) tiers (see [A/CN.9/WG.III/WP.159](#) and [A/CN.9/WG.III/WP.159/Add.1](#)), an option opposed by the Russian Federation, among others, which favours keeping the current *ad hoc* system and adding an appellate *ad hoc* tribunal (see [A/CN.9/WG.III/WP.188](#) and [A/CN.9/WG.III/WP.188/Add.1](#)).

The first issue discussed was whether each and all contracting States should be represented in the standing body ('full representation') or alternatively, only selectively represented, with *ad hoc* members for the non-represented States, an option which member States seem to prefer.


As to the **selection and appointment process**, the alternatives are:

- i. direct appointment by each State;
- ii. appointment by a vote of the contracting States; or
- iii. appointment by an independent commission.

Two opposing views were voiced: selection and appointment of adjudicators by panels—or, alternatively, screening of candidates by panels, followed by appointment by vote of the States—would seem to better ensure that adjudicators are not selected on the basis of political considerations. This is provided that the mechanism is (a) multi-layered, (b) open to stakeholders and (c) transparent. Direct appointment by States might be preferable, however, in view of all the issues that the constitution of panels would raise, including the fact that States would be making political decisions already when constituting such panels. Submitting adjudicator appointments to vote could also be problematic, in that some States could have veto power. Generally, selection by States could lead to adjudicators feeling indebted to the State that has chosen them, although this does not seem to be the case for national courts. It was felt, however, that disputing parties should continue to have some role in the appointment of adjudicators, even if such function is entrusted to an appointing authority (that should take into account the disputing parties' views). More specifically, the role of investors—and, potentially, a consultative role of civil society—would need to be further explored.

Some delegates expressed the need for a high threshold for **removing an adjudicator**, a transparent removal process, without the intervention of contracting States, and the removal decisions to be reasoned. An option would be to task the standing body's president with decisions in this regard, also based on a collegial consultation mechanism involving other adjudicators.

Finally, delegates noted the interest in ensuring **balanced representation and diversity** (regional groups, gender, legal traditions, expertise, language capabilities), possibly by rotating the adjudicators' posts, to promote legitimacy, accountability, independence and procedural fairness. As to **qualifications of adjudicators**, it was felt that they should not be too stringent, with knowledge of public international law and investment law being the minimum, with it being also desirable for them to be (a) experienced in dealing with governments, (b) attentive to the intent of the State party to the investment treaty, (c) trained in mediation as well as other means of dispute resolution; (d) adept at calculating compensation for damages, or at least able to understand the opinions provided by experts.



The Secretariat is to draft a text on selection and appointment of adjudicators in the context of a standing ISDS mechanism (see details on the session's [report](#) .

B. Appellate mechanism (A/CN.9/WG.III/WP.202, paras. 57–59)

The Secretariat had prepared preliminary draft provisions regarding an appellate mechanism in the document mentioned above, in some cases providing alternative drafting options for the Working Group to choose from.

Delegates noted the positive impact that an appeal mechanism may have on correctness and consistency of decisions rendered by ISDS tribunals, while cautioning that the appeal should not result in a full rehearing on each and every aspect of the cases, nor lead to systematic or frivolous appeals.

(a) Scope and standard of review (paragraphs 1 to 3 of the draft provisions)

- i. *Errors of law and fact (paragraph 1)*: Delegates expressed preference for the option in the draft provisions that allows for any errors in the application or interpretation of applicable law to be subject to appeal, provided they were substantial. In contrast, there were diverging views as to whether *errors in fact* should be subject to appeal: should they be so, review must be limited to 'manifest errors' in the appreciation of facts, although a common understanding of the notion of 'manifest error' would have to be developed.
- ii. *Grounds in the existing annulment or setting aside procedures (paragraph 2)*: There were doubts regarding the compatibility and relevance, in the context of an appeal, of the grounds for annulment and setting aside under the [ICSID Convention](#)  and those under national arbitration laws for non-ICSID investment arbitrations (e.g., Article 34 of the [UNCITRAL Model Law on International Commercial Arbitration](#) .
- iii. *Appeal in exceptional circumstances not covered in para-*

graphs 1 or 2 (paragraph 3): This paragraph would only be necessary if errors of law or fact could be reviewed, and the standard of review, under the preceding paragraphs, was narrowly defined.


(b) Decisions by ISDS tribunals subject to appeal (paragraphs 4 and 5 of the draft provisions)

Delegates generally felt that only final decisions rendered at the end of the first-tier proceedings —as opposed to interim measures— should be subject to appeal. There were diverging views both on whether procedural decisions and decisions on jurisdiction of the first-tier tribunal should also be subject to appeal. It was noted that appeals against decisions on jurisdiction should be made during the proceedings and not at the end, with different views on whether the first-tier tribunal should stay or continue its proceedings when a decision on the jurisdiction was pending before the appellate mechanism.

(c) Effect of appeal (paragraph 6 of the draft provisions)

Preference was expressed for a mechanism for the appellate body to efficiently filter and dismiss appeals that did not *prima facie* meet the grounds for appeal, even if no leave to appeal was ultimately required. There was support for an automatic suspension of the effect of the decision rendered by the first-tier tribunal during the period of appeal, which would limit parallel proceedings.

(d) Authority of the appellate body (paragraphs 7 to 9 of the draft provisions)

Paragraph 7, which states that the appellate body has the power to confirm, modify or reverse the decision of the first-tier tribunal, was generally well received. Questions about compatibility with the existing legal framework, domestic setting aside proceedings and the ICSID Convention annulment mechanism were voiced as to paragraph 8, which allows the appellate tribunal to annul in whole or in part the decision of the first-tier tribunal on grounds similar to those for annulment as set out in Article 52 of the ICSID Convention and for refusal of enforcement in Article V of the [New York Convention](#) . Paragraph 9 deals with the appellate body's power to remand a case to the first-tier tribunal, where it is not possible for the former to apply its own legal findings and conclusions to the facts of the case to render a final decision. Some delegates were in favour of broad remand authority, in particular if the scope of review was to be limited to review of law, like in domestic court systems. Others thought that such authority should be limited to cases where the appellate body is unable to render a final decision, while others were totally against it, on considerations of cost and duration of a remand process.

(e) Rectification of errors (paragraph 10 of the draft provisions)

Paragraph 10 of the draft provision grants the appellate body the power to correct decisions in exceptional circumstances. It was suggested that this provision should also encompass other traditional post-decision remedies, like interpretation and revision.


(f) Timelines for lodging the appeal and for the whole procedure (paragraph 11 of the draft provisions)

Some delegates noted that timelines should be short and be strictly adhered to by the appellate tribunal and that the procedure should not last beyond 90 days, 180 days, to a maximum of 300 days, should extensions be granted. Provisions should spell out the limited circumstances in which delays might be allowed, as well as the consequences of non-compliance.

(g) Security for costs of the appeal (paragraph 12 of the draft provisions)

The appellate body's power to order security for costs

was viewed by some as a deterrent against frivolous appeals, although it could, on the other hand, inadvertently limit access to justice of SMEs and other investors, if high amounts were fixed. Paragraph 12 should be completed with specific criteria for ordering security for costs and specific guidance concerning the amount of the security. The issue of respondent States not being able to recover a substantial part or any of their costs in defending unsuccessful cases by investors was mentioned, in support of the suggestion that security for costs should at least cover the procedural costs of the respondent State.

In sum, delegations generally felt that, should an appellate mechanism be developed, its potential impact on the cost and duration of the overall proceedings should be explored, prioritising efficiency and minimising the possibility to abuse the system. To that end, the Secretariat was tasked with further developing the draft provisions on an appellate mechanism and to further report on the issues that arose relating to enforcement (see details on the session's [report](#) .

Submitted by Maria Beatriz Burghetto, ArbitralWomen Board member, independent lawyer and arbitrator, Paris, France

ArbitralWomen Celebrates the Nomination of “ArbitralWomen Connect” for the 2021 ERA Pledge and Congratulates ArbitralWomen Members Nominated for 2021 GAR Awards!

ArbitralWomen Connect, spearheaded by ArbitralWomen Board member **Elizabeth Chan**, has been nominated for the 2021 ERA Pledge Award! Learn more about ArbitralWomen Connect [here](#).

The **Cross-Institutional Task Force Report on Gender Diversity in Arbitral Appointments and Proceedings** has been nominated for the ERA Pledge Award! The Task Force included several ArbitralWomen members. Learn more [here](#).

The nominees for Best Speech/Lecture include ArbitralWomen member **Gabrielle Kaufmann-Kohler** (UCL / BakerMcKenzie Lecture 2020) and ArbitralWomen Board Member **Amanda Lee** (CI Arb International

Women's Day 2021 keynote speech)!

Mute Off Thursdays, founded by ArbitralWomen Board member **Gaëlle Filhol** and Members **Catherine Anne Kunz**, **Claire Morel de Westgaver** and **Ema Vidak Gojković**, has been nominated for Best Innovation and the ERA Pledge Award!

The launch of R.E.A.L. – Racial Equality for Arbitration Lawyers — co-chaired by ArbitralWomen Board member **Rekha Rangachari**, Member **Crina Baltag** and **Kabir Duggal**, and the launch of the Rising Arbitrators Initiative, co-chaired by ArbitralWomen member **Rocío Digón** together with **Ana Gerdau de Borja Mercerau** and **Alexander Leventhal**, both have been nominated for Best Innovation!

The selection of ArbitralWomen member **Claudia Salomon** as the first female President of the ICC International Court of Arbitration has been nominated for Best Development and the Equal Representation in Arbitration Pledge Award!

The launch of the Campaign for Greener Arbitration and its protocols, the brainchild of former ArbitralWomen Board member **Lucy Greenwood**, has been nominated for Best Development!

ArbitralWomen member **Christine Falcicchio** has been nominated for the Campaign for Greener Arbitration Award for sustainable behaviour for her work chairing the Working Group of the Green Protocols.

Many other initiatives, innovations, developments and awards that have been nominated involve ArbitralWomen members in different capacities — we celebrate them all!

Reports on Events

The Schiefelbein Global Dispute Resolution Conference, on 15 January 2021, by Webinar



Catherine Amirfar

The Third Annual Schiefelbein Global Dispute Resolution Conference

took place on 15 January 2021. The conference was hosted by **Victoria Sahani** and the Lodestar Dispute Resolution Center at the Sandra Day O'Connor College of Law and generously supported by **Les** and **Linda Schiefelbein**. The conference featured the Schiefelbein Global Dispute Resolution Lecture by **Catherine Amirfar**, ArbitralWomen member, and four panels focusing on issues related to indigenous peoples, new space disputes, mediation, and disputes arising from Covid-19 related issues.

Catherine's Keynote Lecture, entitled 'Going Virtual: Implications of the "New Age" of Cyber for International Disputes', explored the characteristics and contours of effective data protection plans. She also mentioned that it is important that parties agree in advance – or as soon as possible at the outset of arbitration – regarding what to do in the event of a data breach, and that cybersecurity protocols should be regularly monitored for compliance. She said that institutions can come together and overcome collective action challenges if they can agree on an implementation mechanism that could become universal or, at least, lead to some unifying standards and procedures for how to maintain cybersecurity.

Following the keynote speech, **Doreen Nanibaa McPaul**, Attorney General of the Navajo Nation, led a panel on *Indigenous International Dispute Resolution* with expert panellists: Ambassador **Keith Harper** (Ret.), Partner at Jenner & Block in Washington D.C.; **Stacy L. Leeds**, Foundation Professor of Law and Leadership at ASU Law; **Enrique Prieto-Rios**, Associate Professor with the Faculty of Law at Universidad del Rosario in Bogota, Colombia and **Risa Schwartz**, International Lawyer based

in Toronto, Canada.

Next, Arnold & Porter's **Charles Blanchard** moderated a panel on *New Space: Opportunities and Challenges*, including **Christopher T.W. Kunstadter**, Global Head of Space for AXA XL in New York City; **Caryn Schenewerk**, Vice President of Regulatory & Government Affairs at Relativity Space in Washington D.C.; and **Emilie Marley Siemssen**, Lead Legal & Space Regulatory Counsel and Launch Director for Denmark's GomSpace.



Top to bottom, left to right: Victoria Sahani, Betsy Grey, Barbara J. Dawson, Marek Krasula and Stacie Strong



Top to bottom, left to right: Doreen Nanibaa McPaul, Keith Harper, Stacy L. Leeds, Risa Schwartz and Enrique Prieto-Rios



Top to bottom, left to right: Wolf von Kumberg, Tim Schnabel, Natalie Y. Morris-Sharma, Karl Hennessee and Christina Hioureas



Top to bottom, left to right: Charles Blanchard, Caryn Schenewerk, Christopher T.W. Kunstadter and Emilie Marley Siemssen



Les Schiefelbein

In the third panel, *Mediation the World Over*, **Wolf von Kumberg**, International Arbitrator and Mediator with The International Arbitration Centre, led panellists including **Karl Hennessee**, Senior Vice President of Litigation, Investigations & Regulatory Affairs for Airbus in Paris; **Christina Hioureas**, Partner and Chair of the United Nations Practice Group at Foley Hoag in New York; **Natalie Y. Morris-Sharma**, Government Legal Counsel at the Attorney General's Chambers in Singapore; and **Tim Schnabel**, Executive Director of the Uniform Law Commission in Chicago, Illinois.

Finally, panellists led by ASU Law Professor **Betsy Grey** tackled the timely topic of *Covid-19 Class and Mass Disputes*. Panellists included: **Barbara J. Dawson**, Partner at Snell & Wilmer in Phoenix, Arizona; **Marek Krasula**, Director of Arbitration & ADR, North America, SICANA Inc. at the International Court of Arbitration in New York City; **Victoria Sahani**, Associate Dean of Faculty Development and Professor of Law at ASU Law; and **S.I. Strong**, Associate Professor from the University of Sydney Law School.

Mr Schiefelbein, in his closing remarks, recognised two exceptional

ASU law students — **Olivia Stitz** and **Vanessa Kubota** — as recipients of the annual Schiefelbein Global Dispute Resolution Scholarships; noted that the conference keynote and panels discussed cutting-edge issues from which the global dispute resolution community can draw lessons learned to apply in practice and announced that the 2022 Schiefelbein Global Dispute Resolution Conference is scheduled for 14 January 2022.

Submitted by Victoria Sahani, ArbitralWomen member, Associate Dean of Faculty Development, Arizona State University Sandra Day O'Connor College of Law, Arizona, USA

#letsgetREAL: REAL's Virtual Inauguration, on 18 January 2021, by Webinar



#letsgetREAL!

REAL
Racial Equality for
Arbitration Lawyers

On 18 January 2021, Martin Luther King, Jr. Day, over 700 participants participated in REAL's (Racial Equality for Arbitration Lawyers) virtual inauguration. Over 70 supporting organisations from all over the world collaborated to make the launch a success. Six keynote speakers in international law shared their experiences in relation to diversity and

inclusion. The speakers included **Judge Navanethem Pillay** (former UN High Commissioner for Human Rights), **Kevin Kim** (Founding Partner at Peter & Kim), Professor Dr **Nayla Comair-Obeid** (Founding Partner at Obeid Law Firm), **Meg Kinnear** (ICSID Secretary General), Professor **Emilia Onyema** (Professor at SOAS), and **Uncheora Onwuamaegbu** (International Attorney at Arent Fox LLP).


REAL was created to facilitate a collaboration of international lawyers in international arbitration. In recognition that today international law is one of the most dynamic, specialised






Top to bottom, left to right: Rekha Rangachari, Kabir Duggal, Nayla Comair-Obeid, Kevin Kim, Crina Baltag and Navanethem Pillay

areas of law, and where cross-border disputes naturally involve a broad array of cultural identities and languages, racial diversity is central to this roundabout. REAL is inspired by earlier diversity leaders in the field focused on gender diversity (*i.e.*, ArbitralWomen and the Equal Representation in Arbitration (ERA) Pledge). REAL aims to address inequities with respect to racial equality among legal practitioners, with a focus on arbitration practitioners and arbitrators. The two core goals of REAL are 'access' (ensuring everyone has an equal share in our international practice) and 'advocacy' (ensuring that we can build a voice for those often excluded or ignored in international law).

In the [morning session](#) , three leaders from different parts of the world held the Zoom microphone to share their insights. As a woman of colour raised in apartheid South Africa, Judge Pillay noted that her success is often described as an 'exception', but she urged everyone to consider this as a new norm. Similarly, Professor Obeid faced many obstacles being a female arbitrator, because the power in decision-making had traditionally been reserved

for men. She recalled a gender-biased comment saying, 'a brain of a woman cannot rule like the brain of a man'. Professor Obeid also shared the pressures in reconciling the many roles she simultaneously undertakes: as a mother, wife, practitioner, arbitrator, professor, among others. Kevin Kim emphasised: 'If people are given the right kit and the right tool, they can create wonders'. Indeed, he urged

everyone to abandon the 'one size fits all' mantra and to embrace diversity.

The [afternoon session](#)  spotlighted three additional leaders engaging on triumph and turbulence in the diversity space. Meg Kinnear noted that international institutions like ICSID see diversity as a strength. She emphasised the efforts adopted in spotlighting people to create greater awareness and widen the arbitral pool. Professor Onyema challenged everyone to open more doors for other people. She noted that we end up receiving more if we extend our generosity and kindness to more people. Uncheora Onwuamaegbu emphasised how diversity should be seen as a strength. For example, if someone speaks with a foreign accent, it means that a person is smart enough to speak another language. Further, no one is born an expert in international arbitration. If we afford people the opportunities to grow, they can grow.

REAL hopes to address all forms of diversity, not only racial diversity. These include for example less-abled issues, LGBT issues, mental health issues, and linguistic diversity. Finally, we highlight the need for specific focus on intersectionality (*i.e.*, indi-



Top to bottom, left to right: Meg Kinnear, Kabir Duggal, Rekha Rangachari, Crina Baltag, Emilia Onyema and Uncheora Onwuamaegbu



viduals that have more than one characteristic of diversity, e.g., women of colour). Intersectional individuals often fight multiple battles of diver-

sity and need special consideration in our global mindset. Please join REAL, if you wish to contribute to these efforts.

A recording of Session 1 is available [here](#) and a recording of Session 2 is available [here](#).

Submitted by Rekha Rangachari, ArbitralWomen Board member, Executive Director, NYIAC Co-Chair, REAL; Dr. Crina Baltag, ArbitralWomen Board member, Senior Lecturer, Stockholm University, Co-Chair, REAL and Dr. Kabir A.N. Duggal, Senior International Arbitration Advisor, Arnold & Porter and Lecturer in Law, Columbia Law School, Co-Chair, REAL

Empowering people to progress their careers, on 20 January 2021, by Webinar

Moderators: Janice Yau

(Partner, Stephenson Harwood) and **Jennifer Wu** (Senior Associate, Pinsent Masons) – Panellists: **Briana Young** (Professional Support Consultant, Herbert Smith Freehills), **Brooke Holden** (Principal, Lipman Karas), **Stephanie Sheng** (Senior Counsel, Goldman Sachs), **Annie Tang** (Co-Managing Director, Star Anise), **Andrew Ridgen Green** (Partner, Stephenson Harwood).

In this joint WILHK (Women in Law Hong Kong)/HK45 event, held virtually from Hong Kong, the panellists shared a broad range of experiences and thoughts on empowering us to overcome stumbling blocks or hurdles in our careers, with a focus on arbitration and in-house roles. The panellists also shared insights on managing the return to work from career breaks or maternity leave.

This event report was first circulated by HK45 and it can also be read [here](#).

Panellists' tips included:

Build a network both in and outside of work to support you along your career journey, then do not be afraid to reach out for help.

Raise your profile: look for opportunities to write about relevant topics, participate in, network and speak at industry events (e.g., HKIAC / HK45 /

WILHK). For those interested in progressing their careers in arbitration, consider the HKIAC Tribunal Secretary training as a good introductory step, or join training courses offered by CI Arb and other arbitral bodies.

Work/life balance means different things to different people. It does not necessarily mean that each day/month/year is evenly balanced – find out what works best for you and strive to achieve that. Maintaining a healthy routine and structure will help reduce other sources of stress.

Seek out mentors, sponsors and role models. It is OK to have different people to cover different aspects of your life; these can be from work, family, friends, peers, support groups, associations, etc.

Honesty is the best policy when it comes to explaining any **career gaps** in your CV. Use the time constructively and then consider that time as a value proposition to sell yourself into the next role.

When transitioning back to work after a career break, set yourself up to



Top to bottom, left to right: Janice Yau, Jennifer Wu, Andrew Ridgen Green and Briana Young



Left to right: Brooke Holden, Stephanie Sheng and Annie Tang

succeed. Invest time in the reintegration process: consider what your needs are, what structure will work best for you, and how you can make that work in your organisation. Be willing to communicate this openly to various stakeholders in your organisation. If you are looking for opportunities, consider joining a return-to-work program.

Male allies have a role to play in empowering career progression and supporting gender equality. Women may want to seek out a male sponsor/mentor,

encourage male colleagues/friends to learn more about the issues women face and help to demystify entrenched unconscious biases. Men may want to consider actively reaching out to female colleagues with offers to mentor or assist their careers.

Practice self-compassion. Set realistic expectations and avoid being too hard on yourself.

Be authentic. Authenticity creates enormous benefits for individuals and organisations.

Believe in yourself and push through the boundaries. Put your hand up for opportunities, take risks to see what you are capable of, and do not be afraid! Get out of your own way – you are far more capable than you give yourself credit for.

Submitted by Briana Young, ArbitralWomen member, Professional Support Consultant, Herbert Smith Freehills, Hong Kong

Arbitral Parents: Cómo ser padres en el mundo del arbitraje internacional sin morir en el intento (How to survive as parents in the international arbitration world), on 28 January 2021, by Webinar

On 28 January 2021, ArbitralWomen member **Krystle Baptista Serna** (Independent Arbitrator) moderated an interactive online session hosted by the ERA PLEDGE YPSC and CEA-40 in collaboration with ArbitralWomen, **CEA Mujeres**, **Women Way in Arbitration**, **Women in International Law Interest Group (WILIG)**, and **ASIL**, on the subject of Parenting in International Arbitration. Krystle was joined by a panel of leading international arbitration professionals including ArbitralWomen members **Lucía Montes** (Senior Associate, Cuatrecasas) and **Soledad Díaz** (Partner, Ferrere), as well as **Lucila (Luli) I. M. Hemmingsen** (Partner, King & Spalding); **Alexandre Fichaux** (Senior Associate, Allen & Overy) and **Ángel S. Freire** (Senior Associate, Araoz & Rueda). The panel was introduced

by the organisers, ArbitralWomen member and secretary to the ERA Pledge YPSC **Marta García Bel** (Senior Associate, Freshfields), **Alegría Jijón** (CEA-40/ Senior Associate, Pérez Bustamante & Ponce) and **Heidi López** (CEA-40/ Counsel, Uría Menéndez).

The panellists opened the discussion sharing their experiences on the preparation for maternity/paternity leave, their time on leave and the return to work. All panellists stressed the importance of positive parental policies in the workplace, and one of the speakers explained that thanks to these policies, her return to work was easier than she had anticipated and that it was extremely important for her and for her family's well-being. Another speaker highlighted the importance of preparing his team and colleagues for his leave and of

cear **ERA PLEDGE YPSC** **WVA**

ARBITRAL PARENTS: CÓMO SER PADRES EN EL MUNDO DEL ARBITRAJE INTERNACIONAL SIN MORIR EN EL INTENTO

Fecha: 28 de enero de 2021
Localización: N/A – El evento se retransmitirá vía Zoom

PROGRAMA

10:00 NY / 16:00 Madrid: Palabras de Bienvenida

Marta García Bel (Asociada Senior, Freshfields)
Alegría Jijón (Asociada Senior, Pérez Bustamante & Ponce)
Heidi López (Counsel, Uría Menéndez)

10:10 NY / 16:10 Madrid: **Panellistas**

Soledad Díaz (Socia, Ferrere)
Alexandre Fichaux (Asociado Senior, Allen & Overy)
Ángel S. Freire (Asociado Senior, Araoz & Rueda)
Lucila (Luli) I. M. Hemmingsen (Socia, King & Spalding)
Lucía Montes (Asociada Senior, Cuatrecasas)

Modérateur:

Krystle Baptista (Árbitro, KB International Law & Arbitration)

Formato: Tras escuchar las experiencias de los panellistas, los participantes tendrán la oportunidad de plantear sus preguntas y compartir sus propias experiencias en formatos más dinámicos y personales, a través de break-out rooms con los panellistas. A final del webinar se hará una recapitulación de todo lo compartido en el evento.

Inscripción: El evento es gratuito, pero requiere inscripción previa a través del siguiente [enlace](#). Este webinar no se grabará y aplicarán a él las Chatham House Rules. Todo participante acepta con su inscripción a este webinar estas reglas.

Con la colaboración de:

WILIG **cear** **ARBITRAL WOMEN**


managing expectations before and after the leave. Due to a change of office, he was glad to have been able

to enjoy a longer paternity leave with his second child.

One panellist also shared his experience as the first male lawyer at his firm to take paternity leave and how it caused commotion among his male co-workers. Now that he is a father of three, he explained that he has adapted his journey to be able to share parental commitments with his wife. All panellists agreed that flexibility and organisation are essential to balance family and work.

Another panellist explained that she changed firms while pregnant, a bold move that did not interfere with her maternity leave. She spoke openly about postpartum depression and the importance of making sure that recent mothers who re-join the firm discuss their expectations with their firm's management and team. The panel also addressed the challenges of the Covid-19 lockdown with kids at home and shared the lessons learned and the importance

of work-life balance. Finally, each one of the speakers gave their 'top tips' on the subject. The panel concluded with group discussions in break-out rooms and a summary of the main points.

The flyer of this event is available [here](#) .

Submitted by Rebecca Paradellas Barrozo, Ph.D. candidate at the University of Coimbra and Legal Intern at Krystle Baptista International Law and Arbitration, Madrid, Spain.

Delos TagTime Series, Session 3, Episode 2: Julie Bédard on 'Who Decides: Courts or Tribunals? Arbitrability in International Arbitration', on 3 February 2021, by Webinar




Left to right: Kabir Duggal, Amanda Lee, Julie Bédard

On 3 February 2021, ArbitralWomen member **Julie Bédard** (Skadden) tackled some of the most challenging aspects of arbitrability in the US. This webinar was part of Delos Dispute Resolution's 'TagTime' series, supported by ArbitralWomen and presented by ArbitralWomen Board member **Amanda Lee** and **Kabir Duggal**.

Julie began by highlighting the distinction between the meaning of arbitrability in the US and other jurisdictions. She noted that in the US, arbitrability concerns whether the parties have submitted a particular dispute to arbitration, whereas in other jurisdictions, arbitrability refers to whether the dispute can be subject to arbitration in the eyes of the law.

Julie continued by addressing one of the questions most hotly debated by US courts in the last 10-15 years: who gets to decide whether a dispute

is arbitrable, the courts or the tribunal? Historically, US courts had an active role in deciding arbitrability. In the seminal *First Options* case, the US Supreme Court stated that unless there is clear and unmistakable evidence, such as additional guidance from the parties agreeing that the arbitrators shall decide arbitrability, then there is a presumption that the parties intended the courts to decide arbitrability (reaffirmed in the *BG Group* case).

The complexity of the arbitrability debate is seen in the recent case of *Schein*. The case concerned an arbitration agreement that carved out certain actions from arbitration. The clause incorporated the [AAA Rules](#) , which give arbitrators the power to rule on their own jurisdiction, including arbitrability. The courts decided not to delegate arbitrability to the arbitrators despite the incorporation by reference

of the AAA Rules. The case reached the US Supreme Court, which disagreed with the decisions of the courts below and remanded the case.

Although the US Supreme Court did not address the incorporation issue, it indicated that the arbitration clause must '*unambiguously establish the parties' manifestation of intent to withdraw from the courts' authority to resolve issues of arbitrability*'.

The case subsequently reached the US Supreme Court again, this time on another issue, i.e., whether a provision in an arbitration agreement that exempts certain claims from arbitration negates an otherwise clear and unmistakable delegation of questions of arbitrability to an arbitrator. The US Supreme Court took the unusual step of dismissing the case on the basis that *certiorari* was improvidently granted (i.e., the Court should not have accepted the case).

Julie highlighted that despite the lack of further guidance from the US Supreme Court, US courts across the country have reached a consensus that incorporation of arbitration rules by reference constitutes sufficient evidence of the parties' intent to delegate questions of arbitrability to arbitrators (such

consensus was seen in the *Domino's Pizza* case).

Before taking questions from the audience, Julie concluded that even though there is a presumption in favour of arbitration and the arbitrability question is now better defined, parties should aim for clearer drafting and avoid carve-

outs in their arbitration agreements.

Julie tagged **Ndanga Kamau** to appear as a guest on a future episode of the series.

Submitted by Anne-Marie Grigorescu, New York State attorney-at-law (pending admission), New York City, US

ICC YAF: Equality of Parties before International Investment Tribunals, on 10 February 2021, by Webinar



Top to bottom, left to right: Harshad Pathak, Alina Leoveanu, Toby Landau, Laura Fadlallah, William Ahern and Gabriele Ruscalla

On 10 February 2021, Alina Leoveanu ArbitralWomen member, and **William Ahern** (Mayer Brown, Paris) hosted and co-moderated an ICC YAF webinar on the topic of 'Equality of Parties before International Investment Tribunals'.

The topic was the subject of a study and Resolution of the 18th Commission Report of the *Institut de Droit International* dated 31 August 2019 ('Resolution'). After the keynote address delivered by **Toby Landau QC** (Essex Court Chambers Duxton), the panel, composed of **Harshad Pathak** (P&A Law Offices), **Laura Fadlallah** (Bredin Prat) and **Gabriele Ruscalla** (ICC International Court of Arbitration) discussed issues covered by the Resolution, including the effect of the State's criminal law powers on the tribunal's process, States' rights to institute counterclaims and equality of parties in the composition of international investment tribunals.

First, Toby Landau QC distinguished three aspects inherent to the concept of equality: the *constitutional* aspect, meaning that it is superior to other procedural rules; the *reciprocity* aspect, according to which one party should be awarded the same treatment as the other party; and the *procedural* aspect, taking the form of substantial equality *i.e.*, in order to achieve a balance between the parties, they may be treated differently when their situations are different. Thereafter, he looked at the tensions in investor-State arbitration arising from the difficulty of applying the principle of equality to a vertical system of dispute resolution, which involves two unequal parties: the investor and the State.

Laura Fadlallah then observed that investment tribunals may protect the equality of the parties in the context of criminal investigations or proceedings initiated by the host State against the

investor by, for instance, declaring inadmissible evidence obtained during the course of the criminal investigation. Such an order may constitute interference with the State's criminal justice powers. Thus, investors must prove that the criminal proceedings are connected to the arbitration and prevent them from asserting their rights, cause irreparable and imminent harm to the arbitration process, and that there is no higher public interest stake justifying the criminal proceedings.

Harshad Pathak addressed the role of counterclaims in maintaining the party equality. After an historical insight, he observed that investment tribunals have two approaches when determining whether counterclaims are within their jurisdiction. On the one hand, following a narrow approach, tribunals may consider that the language of investment treaties prevails. On the other hand, following


a broader approach, tribunals may consider that when parties consent to the ICSID Convention (or other institutional rules) and an investor commences arbitration in accordance with such rules, the investor's double consent gives the tribunal the jurisdiction to hear admissible counterclaims. He then noted a structural inequality: while an investor can bring claims in relation to measures that relate only to its local company, when the host State attempts to advance a counterclaim based on the conduct of such local company, the investor can assert its separate legal personality before

the arbitral tribunal.

Gabriele Ruscilla observed a distinction between equality of treatment and equality of appointment in investment arbitration. The current design of the system for the constitution of arbitral tribunal in ISDS provides for both: equality of treatment as regard the independence and impartiality requirements and equality of appointment since both parties may appoint one arbitrator. However, he shared his concern that the proposed design and reform of ISDS decision-making bodies seems to limit the principle of 'equality of appointment'. In this

respect, he further noted that the Resolution considers that the principle of the equality of the parties does not require that each party retain the ability to appoint an arbitrator.

The panel concluded its discussion with an insightful Q&A session.

The recording of the event is available on [Mayer Brown's YouTube channel](#) .

Submitted by Alina Leoveanu, ArbitralWomen member, Senior Legal Consultant, Mayer Brown, Paris and Nawal Jallabi, Trainee Solicitor, Mayer Brown, Paris, France.

Resolving Art Disputes Through the New Court of Arbitration for Art, on 10 February 2021, by Webinar



Top to bottom, left to right: William Charron, Camilla Perera De Wit, Nadia El Baroudi-Kostrikis and Nikos Elia

from the art world such as artists, art dealers, collectors and auction houses and museums representatives.

The global art market has grown immeasurably with a high volume of transactions conducted every year. As a result, instances of art-related disputes are many and multifaceted. These art disputes can be resolved through litigation before state courts or through alternative dispute resolution mechanisms such as arbitration and mediation.

The CAfA was created to facilitate the resolution of these disputes through alternative dispute resolution mechanisms such as mediation and arbitration. Camilla Perera De Wit and William Charron explained the genesis of this new court, its rules and operations and why alternative dispute resolution mechanisms offered by CAfA are particularly appropriate for art-related disputes.

In the first part of the presentation, William Charron defined art law, expanded on the specificity of the art market and stressed the fact that transactions that occur in the art market need specialised treatment, hence the creation of CAfA. William also addressed some of the key issues raised when art disputes are resolved by state courts, such as the inadequacy of courts in addressing questions of authenticity

The Cyprus Branch of the

Chartered Institute of Arbitrators held a webinar on 10 February 2021 titled 'Resolving Art Disputes Through the New Court of Arbitration for Art' with guest speakers **Camilla Perera De Wit**, Secretary General/Director General of the Netherlands Arbitration Institute and Board Member of the Court of Arbitration for Art (CAfA) and **William**

Charron, the mastermind behind CAfA, a litigator and art lawyer, co-chair of Pryor Cashman Art Law Practice and Board Member of CAfA.

The webinar was introduced by the Cyprus Branch Chairman **Nikos Elia** and moderated by Dr **Nadia El Baroudi-Kostrikis**, ArbitralWomen Member, and attracted a considerable international audience, which included stakeholders

as well as in restitution cases, which are both common elements of disputes in the art world. Equally, weighing the evidence is another main concern, given that state courts do not appoint experts and only rely on evidence presented in the adversarial process before deciding which side's evidence seems more correct. This process cannot be considered adequate in an art dispute and may result in a rejection of the court decision by the market.

William also highlighted the issue of the liability of experts and the problems they may face for offering their opinions, which often leads them to opt out of a litigation process in fear of being sued and potentially having to pay exorbitant legal fees as a result. All these issues and many more spearheaded the creation of the CAfA, whose aim is to fill a gap and


enable art law disputes to be settled in a cost and time efficient way.

Camilla Perera De Wit then introduced the Netherlands Arbitration Institute (NAI). As the administrative body under the CAfA arbitration rules, its role is to administer the art disputes brought before CAfA. Camilla presented the NAI rules as well as CAfA's rules and highlighted their specificity, given the peculiarity of art disputes and the specialised nature of the Court. She also presented the pool of arbitrators constituted by lawyers experienced in dealing with art transactions and art litigation. Regarding the pool of experts, she elaborated on the specificity of CAfA's rules in terms of expert evidence on issues of forensic science or provenance.

Information was also provided on the role of the Technical Process Advisor,

a peculiarity of CAfA's proceedings as well as on CAfA's rules with respect to choice of law, aimed at avoiding the risk of parallel litigation if parties or the market challenge the result on the grounds that a different jurisdiction's law should have been applied.

Finally, Camilla outlined the privacy and confidentiality of the proceedings, the possibility for the decision to be published and the instructive role of such published material for state courts and the art market in general.

A recording of the event is available [here](#) .

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

Arbitration and ADR in Technology Disputes: A View from Leading Practitioners in the Field, on 12 February 2021, by Webinar

Alternative Dispute Resolution (ADR) offers practical solutions that allow technology disputes to be resolved with efficiency and expertise that is not guaranteed in a courtroom setting. A panel of leading women in international arbitration led a fascinating discussion on the evolving role of ADR in technology agreements and disputes.

The discussion began with a focus on the way that arbitration caters to technology disputes. ArbitralWomen member **Sarah Reynolds** noted that ten years ago it was rare for technology clients to include arbitration clauses in their agreements, but today arbitration is being used in technology disputes relating to software licenses, technical services agreements and their implementation. Arbitration meets tech clients' need for confidentiality, specialised decision-making and rules promoting efficiency. ArbitralWomen member **Maria Chedid** added that American



Top to bottom, left to right: Crenguța Leaua, Sarah Reynolds, Nilufar Hossain and Patricia Shaughnessy

tech companies were reluctant to move away from courts and have greater bargaining power compared to their counterparts in contractual relations. But as the industry snowballed, non-American companies began pushing for a more neutral forum: Arbitration is the natural choice. The technology industry demands

effective and expedient resolution of disputes, which is precisely what ADR offers.

The panellists then discussed whether certain technology disputes are better suited to arbitration than others. Maria Chedid addressed the relevance and impact of research and development, non-disclosure, joint

venture and settlement agreements that require parties in the tech industry to use arbitration as a dispute resolution mechanism. Dr **Patricia Shaughnessy** mentioned that arbitral institutes are now defining 'technology disputes' in their rules, and thus cementing the relationship between arbitration and tech. When drafting arbitration clauses, of course choosing the institutional rules that best fit the particular agreement is an important decision, but another one is the seat. US tech companies tend to want to involve American-style discovery and therefore choose northern California or Texas as the seat. However, Nordic companies often prefer SCC, SIAC, or ICC and a seat where those institutions are located.

ArbitralWomen members **Crenguța Leaua** and **Claire Morel de Westgaver** agreed that the key requirements of technology disputes, that is, a confidential and flexible procedure to accommodate the time-sensitive nature of such disputes, are the fundamental features of arbitration. Arbitration is adaptive and innovative, and takes into account the

specialised needs of highly technical disputes. Additionally, arbitrators are trained to be versatile, as opposed to courts, that are bound by jurisdictional laws and procedures. Dr. Patricia Shaughnessy added that speed is vital in tech disputes, since tech is such a fast market, and arbitration allows for innovative dispute resolution techniques to embrace this need. For example, emergency arbitration is available to parties for interim relief before the constitution of the tribunal and, under some rules, an emergency arbitrator can be appointed within 24 hours to determine an application for an interim measure within five days.

The moderator, ArbitralWomen member **Nilufar Hossain**, then asked the panel what trends they expect to see in tech disputes. Crenguța Leaua observed that non-traditional arbitration and ADR is already developing, particularly in the blockchain industry, as blockchain challenges the very authority on which arbitration is based. Blockchain requires 'distributed authority', which translates to distributed justice. This means a larger number of people have to decide the

dispute instead of a tribunal of one or three. How this will unfold and its efficacy remain to be seen, but the seeds of this trend have already been planted. Crenguța Leaua also opined that online dispute resolution (ODR) 'is now' and we will never go back to in-person ADR as the norm—instead, we will incorporate what we have learned during 2020 into future practices. Claire Morel de Westgaver highlighted the increasing number of parallel proceedings that overlap and may have different outcomes in different fora. Interestingly, she also pointed out that as more and more tech disputes are submitted to arbitration, more and more arbitrators have to have the technical knowledge and skill to address such disputes. This, in turn, will increase the diversity of arbitral panels, particularly by including millennials.

Submitted by **Niyati Ahuja**, ArbitralWomen member, Associate, Diamond McCarthy, NY, USA and **Veronica Dunlop**, ArbitralWomen member, Law Clerk, Jaroslawicz & Jaros, LLC, NY, USA.



Left to right: Claire Morel de Westgaver, Maria Chedid and Mirèze Philippe

Women in Mediation JAIAC Coffee Time, on 17 February 2021, by Webinar

On 17 February 2021, the Jamaica International Arbitration Centre (JAIAC) hosted an all-women event webinar titled 'Women in Mediation: Negotiating Above Gender, Race and Systemic Bias in the Selection and Treatment of Neutrals'. Chief Justice for Eastern Caribbean Supreme Court, Dame **Janice George-Pereira** and ArbitralWomen President **Dana MacGrath** delivered

welcome remarks. ArbitralWomen Board member **Rose Rameau**, Managing Partner of RAMEAU INTERNATIONAL LAW in Washington D.C, co-organized and moderated the programme. Panellists included Justice **Joyce Aluoch**, Former Judge and 1st Vice President (International Criminal Court at The Hague), Dr **Judith Knieper**, Legal Officer (The United Nations Commission on

International Trade Law Secretariat), **Louise Barrington**, ArbitralWomen Co-founder / Board Member and Independent Arbitrator and Mediator & Member (Arbitration Place) and **Clare Miller**, Attorney-at-Law and Mediator (Crafton S Miller & Co. & Vice President Jamaica Association of Mediators).

This was a successful programme with 179 participants around the world,




from France, Singapore, South Africa, Guatemala, Philippines, Austria, Turkey, Greece, Chile, Belize, Guyana, Jamaica, The Bahamas, British Virgin Islands, Kenya, USA, UK, Malaysia, Trinidad & Tobago, St Vincent & the Grenadines, India, Colombia, Benin, Grenada, Nigeria, Dominica, Anguilla, St. Lucia, Antigua & Barbuda, Algeria, Martinique, Montserrat, Barbados, Canada, Switzerland, Egypt, and Tunisia.

The webinar focused on answering the following questions: Do women find it more difficult than men to secure selection as mediators on account of gender? To what extent does race limit the scope for professional development, and how does it impact women when mediator selection is in issue? How do other factors, such as jurisdiction of nationality or residence, or old school ties impact whether a woman is selected to serve as mediator? How different from men

of similar race, jurisdiction of nationality or residence, do old school ties or other such factors, if at all, impact how women are treated by the parties and their representatives or administering institutions when serving as neutrals in a mediation?

The panel highlighted the limitations faced by women in mediation and how they have been able to navigate their way to success. The discussion was premised on the biases women face as mediators despite the inherent soft skills that women possess that are much needed in the mediation process and that women are more likely than men to bring to it. The panel addressed the distinction between women in mediation as advocates and women as mediators and what they bring to the table. Furthermore, how women are unfortunately not always highly regarded, but are central to peacebuilding and to finding solutions to conflicts.

The panel delved in deep to the root causes of gender biases: specifically, whether gender or race play a significant role to the selection to serve as mediator; whether parties are influenced by the outcome and whether there are any conscious or unconscious biases with clients, representatives, and institutions in the selection process. The panel noted that these conscious and unconscious biases are evident in the types of cases women are appointed to. For example, they are not appointed to the big commercial cases, but rather small cases such as family or labour law.

The panel highlighted how the promotion of gender equality increases women's economic empowerment, such as access to Micro, small and medium-sized enterprises ('MSMEs') as most MSMEs are women-owned. The panel emphasised that institutions are instrumental in the selection of women as mediators and also consciously seeking out people of different geographical background. Institutions are making efforts to harmonise and modernise their texts and reports to have a more gender-inclusive language. For example, [UNCITRAL WG III ISDS reform text](#) ...indicated that appropriate diversity, such as geographical, gender and linguistic diversity as well as equitable representation of the different legal systems and cultures would be of essence in the ISDS system'.

The webinar concluded with the panel providing solutions on conscious and unconscious biases, aiming at dealing with them instead of getting rid of them at once. Constant effort must be taken daily that requires changing habits and mindset. Most importantly, for women to be at the forefront, exposure is critical and it can be achieved by the support of institutions, parties and counsel.

The event ended with a relaxing 30 minutes' musical treat from the superbly gifted and otherwise also simply amazing reggae artiste, Duane Stephenson.

Submitted by Rose Rameau, ArbitralWomen Board member, Partner, Rameau International Law, and Ramatulahi Jalloh, Legal Consultant at Rameau International Law, Washington D.C, USA

Mind the Gap: a fresh look at procedural gaps in institutional rules, on 18 February 2021, by Webinar



Left to right: Anina Liebkind, Duncan Speller, Elisabeth Rath

On 18 February 2021, Young Arbitrators Sweden ('YAS') organised its first event together with Young Austrian Arbitration Practitioners ('YAAP') on the topic 'Mind the Gap: a fresh look at procedural gaps in institutional rules'. The webinar provided insights and comparisons between different institutional rules and how arbitrators can be influenced by national procedural codes in overcoming procedural gaps in the institutional rules. The panel also touched upon similarities and differences experienced in arbitrations in Sweden and Austria.

The first part of the event was devoted to a panel discussion moderated by **Duncan Speller**, Partner, WilmerHale, London, UK. In his opening remarks, he noted that gaps in institutional rules; that is, situations which may occur during an arbitration which are not regulated by the institutional rules, may be considered an opportunity for the arbitrator to adapt the arbitration according to the wishes of the parties and the characteristics of the arbitration at hand.

The panel of two Swedish and two Austrian experts provided their views on the topic during an interactive discussion. **Thomas Herbst**, Senior Associate, Zeiler Floyd Zadkovich, Vienna, Austria, and **Elisabeth Rath**, Associate, Knoetzl, Vienna, Austria, initiated the panel discussion by introducing arbitration compared to court proceedings in Austria and reflected on how frequently arbitrators resort

to filling gaps in institutional rules by applying the national procedural code by analogy. She mentioned some examples from institutional rules that cover gaps related to set-off claims and quantum, for instance. After the insightful presentation by the Austrian speakers, **Henrik Fieber**, judge, Stockholm district court and independent arbitrator, Stockholm, Sweden, and **Anina Liebkind**, ArbitralWomen member, Partner, Norburg & Scherp Advokatbyrå, Stockholm, Sweden, gave an account of their experiences on the topic from a Swedish perspective. Henrik Fieber commented that, in essence, arbitration only consists of gaps, and in Sweden, in a purely domestic arbitration, it is generally accepted and expected that the parties and the arbitrators will be influenced by the national procedural rules. However, if this is not the parties' wish, it is important to establish common ground for the arbitration at an early stage in the proceedings. Anina Liebkind stressed the importance of

the human framework, which she defined as the case-specific aspects, such as the legal background of the arbitrators and of opposing counsel, as well as the client's, that an advocate must consider in order to tailor their case strategy to achieve the best possible outcome for the client. She also noted that in practice, gaps provide discretion for the arbitral tribunal that allows the advocate to argue for the best options available for their client, which is invaluable in arbitration proceedings.

The second part of the event was dedicated to a virtual networking session. The participants were divided into smaller groups in which Swedish and Austrian practitioners had the opportunity to continue the discussion on the procedural gaps in institutional rules and to address other relevant issues with international colleagues.

Submitted by **Madeleine Thörn**, Associate, Norburg & Scherp Advokatbyrå, Stockholm, Sweden



Left to right: Thomas Herbst, Henrik Fieber

CIArb: Diversity, Equity and Inclusion, on 23 February 2021, by Webinar



Left to right: Tina Patterson, Rebekah Ratliff, Homer C. La Rue, Katherine Simpson

On 23 February 2021, the Char-tered Institute of Arbitrators North American Branch hosted a [webinar](#) about 'Diversity, Equity and Inclusion (DE&I)' initiatives aimed at increasing awareness of black/African American Alternative Dispute Resolution (ADR) practitioners. Arbitrator **Tina Patterson** of Jade IT Solutions moderated the panel, consisting of **Rebekah Ratliff**, Prof **Homer C. La Rue**, and Dr **Katherine Simpson**.

With the help of audience members who were personally involved in the case, the panel addressed the Jay-Z case. The story is not meant to name or shame anyone or any particular organisation. Rather, the story is one of recent history that shows how diversity in the selection of arbitrators of colour is unresolved. If we are to be truly reflective and engaged in learning from experiences, the reaction to the Jay-Z story should be that, even for organisations that have done much to address diversity in the selection of arbitrators of colour, there is more to be done.

What is not useful is to attempt to rebut the Jay-Z story with a recount of all that an organisation has done to address diversity in the selection process, i.e., the declaratory 'my organization is doing everything that can be done'. Rather than engage with additional paths, these arguments shift the blame onto the diverse potential appointees and promote the incorrect views that 'there are not enough

"qualified" persons' or that the issue of diversity in the selection of arbitrators of colour is intractable. Such sentiments of frustration have left the ADR community wringing its collective hands and continuing to dither.

'Collectively', Prof La Rue explained, 'we are better than the state of inaction or incomplete action, where this frustration has left us. We guide others in the ways in which collaborative efforts can lead to achievements that individuals, on their own, may not be able to conceive, let alone bring about. A call-to-action by the ADR community would include a pledge by users of ADR services and providers of arbitration and mediation services to commit to new ways of addressing the issue of diversity in the selection of arbitrators and mediators. The Ray Corollary Initiative ('RCI') 30% metric may be one of those innovations that the ADR community should be embracing'. The Ray Corollary Initiative is named for the first black female lawyer in the U.S.

Prof La Rue explained that, if the industry wants to increase the number of persons of colour and women who serve as neutrals, then it must change the way that neutrals are selected and set better goals. At least thirty percent (30%) of each slate of neutrals should be women and people of colour. Requiring more diverse neutrals exponentially improves their likelihood of them being appointed and will help the industry separate itself from the *status quo*, where the combination of white skin

colour, advanced age, and male gender are treated as 'qualifications', rather than as immutable characteristics.

ArbitralWomen member and JAMS arbitrator / mediator Rebekah Ratliff presented on behalf of the Washington D.C.-based National Bar Association ('NBA'), which is the oldest and largest national network of predominantly African American law-related professionals. The appointment of diverse neutrals continues to be a challenge, and the selection of diverse neutrals is an imperative for bringing varied and valuable experience to the ADR table, where they reflect the personal and professional cultures of the people we serve. The NBA's ADR Section has produced an [NBA-certified Panel](#) of mediators and arbitrators with intersectional industry subject-matter expertise. These arbitrators have been interviewed and vetted by the NBA and participate in a number of recognised annual training programmes to maintain their skills at the high level required by the NBA.

Dr Katherine Simpson discussed the Arbitrators of African Descent with a U.S. Nexus roster ('the New List'), which she prepared with Nancy M. Thevenin in 2020. ArbitralWomen has already [reported](#) widely on the List. An update to the List will be announced soon.

Submitted by Dr Katherine Simpson, ArbitralWomen member, Independent Arbitrator with 33 Bedford Row Chambers (London, UK) and Simpson Dispute Resolution (US).

Refinement and Execution of Roles in Arbitration: Analysis of International Standards, on 23 February 2021, by Webinar (in Ciudad de Panamá, Panamá)

On 23 February 2021 the Panama Centre for Conciliation and Arbitration (‘CeCAP’) held the Workshop on Refinement and Execution of Roles in Arbitration: Analysis of International Standards. The Workshop consisted of the role play of four characters who discussed the steps to commence the arbitration and prepare the procedure.

The case was prepared by Lic **Liliana Sánchez** Director of CeCAP and Dr **Carlos A. Arrue Montenegro**. The characters were four lawyers from the Panamanian firm Pearson-White & Brandon: senior lawyer and former Supreme Court judge, Quique Cubas, played by **Salvador Fonseca-González**, senior lawyer and author of several treatises, Giana Venta, played by **Cecilia Flores Rueda**, and newly incorporated junior lawyers Juan Amanecer and Aurora Luna, played by **René Irra** and **Rebeca Mosquera**.

Pearson-White & Brandon was hired by BIO QUIMES INTERNATIONAL CORP (‘Bioquimes Corp’) and BIO QUIMES CONSTRUCTIONS & Co. (‘Bioquimes Construction’) to file a lawsuit against YUCAS INDUSTRIES (‘Yucas’). The role-play of the case consisted of a discussion of the facts of the claim, documents and evidence to be requested from the client, the parties’ claims, the constitution of the arbitral tribunal, and areas requiring expertise, amongst others.

The main purpose of the Workshop was to portray the different perspectives of expertise and youth in international arbitration. The young lawyers focused on the best practices in international arbitration and the senior lawyers focused on their litigation knowledge, client relationship concerns and fees.

The fictional factual narrative of the case study consisted in a dispute under the arbitration rules of CeCAP,

regarding a major energy project in Tierra Árida, involving the design, construction and development of an ethanol plant. It was an interesting and quite creative case!

Yucas was a private capital company in Rutiland Tierra Árida, which won an innovation award. The award consisted in offering Yucas, through the National Organization of Technical Assistance for the Development of the Economy (‘ONATDE’), technical assistance for the development of a large-scale ethanol production project, and attracting the alliance with international companies dedicated to ethanol production.

ONATDE finally recommended the company Bioquimes Corp. On the other hand, Bioquimes Corp. not only offered its experience and knowledge in ethanol production, but also included in the contract Bioquimes Construction, its subsidiary dedicated to the construction of ethanol plants.

Yuca decided to enter into a contract with Bioquimes for the development of the ethanol project, where Yucas authorised the use of its biochemical method and Bioquimes would carry out the process using Yucas’ technology.

The dispute resulted from various issues, including several incidents which resulted on the major delay of the project. Yucas’ arguments mainly related to the deficiencies on the plant’s equipment, its structural problems and malfunctions, and the unexperienced chemists. Bioquimes’ counter arguments mainly related to the claim that the cassava strain did not contain the amount necessary to reach sufficient level for ethanol production.

In light of the fictional dispute, each lawyer had a subtopic of discussion. However, all lawyers jointly analysed the case and the steps to be

taken, without losing sight of being sufficiently didactic so that they could deal with all their doubts or change the way things were usually done in the firm.

After the role play and the panel discussion, the audience was divided into parallel discussion rooms, moderated by the panellists, and provided feedback to the participants on the connection between the role play and the panel discussion.

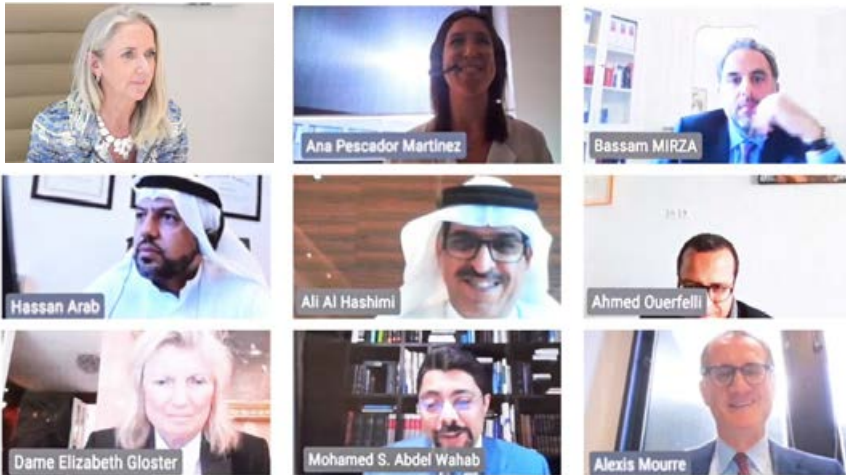
The discussion was fruitful and enriching, focusing on:

- i. best practices in arbitration;
- ii. arbitrator selection;
- iii. preparing the request for arbitration, in accordance with the new virtual practices;
- iv. useful tips on evidence and the use of technology; and
- v. guides for virtual hearings.

Submitted by Cecilia Flores Rueda, FCIArb, ArbitralWomen member, FloresRueda Abogados, Mexico City, Mexico



9th ICC MENA Conference on International Arbitration, on 24 February 2021, by Webinar



Top to bottom, left to right: Linda Fitz-Alan, Ana Pescador Martínez, Bassam Mirza, Hassan Arab, Ali Al Hashimi, Ahmed Ouerfelli, Elizabeth Gloster, Mohamed S. Abdel Wahab and Alexis Mourre

With extraordinary reach in 2021, the 9th ICC MENA Conference, organised and co-hosted by the ICC and Abu Dhabi Global Market, welcomed 1172 participants from 93 countries via its co-host, Abu Dhabi Global Market (ADGM).

The high participation rate in this conference is a reflection of the ICC's prominence as an institution in MENA. For example, the UAE ranked 8th and 9th in 2018 and 2019 out of 142 and 147 countries, respectively, for the most frequent nationalities among parties involved in ICC-administered arbitrations. It is also an indication of the burgeoning interest of parties from across the world in dispute resolution in the region.

The conference began with the announcement that the ICC would be opening a case management office for the ICC Court Secretariat in ADGM's Arbitration Centre, its fifth overseas case management office worldwide. This development is principally due to the success of its Representative Office, which was established in ADGM in 2018. ArbitralWomen member **Linda Fitz-Alan**, Registrar and Chief Executive of ADGM Courts, discussed the significance of the expansion with **Alexis Mourre**, President of the ICC International Court of Arbitration. One of the key points raised was that since the opening of the ICC's MENA Representative Office, both the ICC and ADGM have driven

growth and support of arbitration in the region. The expansion of the ICC Court's footprint is also testament to the increasing attraction of Abu Dhabi as a global destination for international dispute resolution.

Various sessions then followed, including two panels and a roundtable. ArbitralWomen member **Iryna Akulenko**, Managing Consultant, HKA, UAE and newly appointed Chair of the Chartered Institute of Arbitrators, UAE Branch, was a speaker for the panel titled 'The increasing role of expert evidence in infrastructure disputes:

A necessary evil?' The topic was presented in an Oxford style debate and the panellists expressed different viewpoints around this controversial theme. According to Iryna Akulenko, experts' assistance to arbitrators will continue to be in demand, because experts render information digestible for tribunals. She argued that this does not prevent arbitrators from making their own independent decisions, without being influenced by experts.

The conference also included a valedictory session by **Sami Huerbi**, Director for Eastern Mediterranean, Middle East & Africa, ICC International Court of Arbitration, who has stepped down from his post, after being with the ICC for over 15 years. Sami was pivotal in the ICC's development in the MENA region across that time and will remain as a consultant to the organisation. To conclude the conference, the ICC hosted a Young Arbitrators Forum (YAF) event, as well as a Diversity session, which was supported by ArbitralWomen and Equal Representation in Arbitration.

A longer report is available [here](#).

Submitted by Hannah Dennehy, ADGM Arbitration Centre, Abu Dhabi, UAE

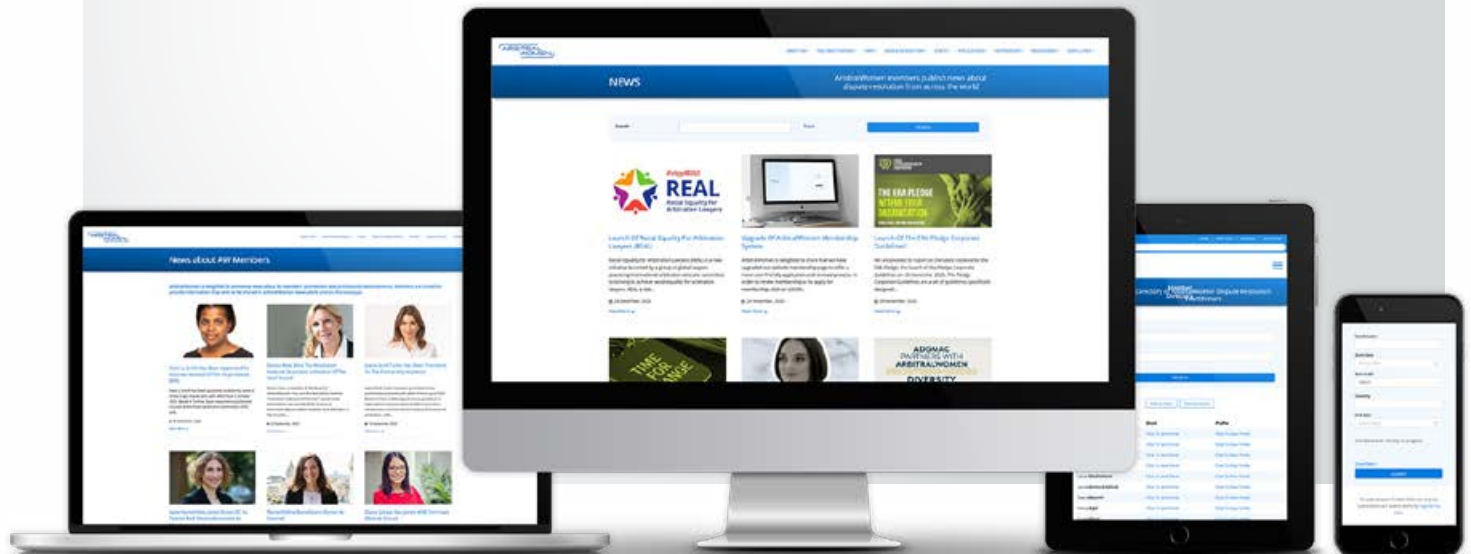


Top to bottom, left to right: Iryna Akulenko, Sabrina Ainouz, Roberta Downey, Andrew Mellor and Alex Bevan (moderator).

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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
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- Opportunity to showcase your professional news in ArbitralWomen's periodic news alerts and [Newsletter](#)
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- Visibility on the [News about AW Members](#) to announce news about members' promotions and professional developments
- Ability to [obtain referrals](#) of dispute resolution practitioners
- [Networking](#) with other women practitioners
- Opportunity to participate in ArbitralWomen's various programmes such as our [Mentoring Programme](#)

We encourage female practitioners to join us either individually or through their firm. Joining is easy and takes a few minutes: go to '[Apply Now](#)' and complete the application form.

[Individual Membership](#): 150 Euros.

[Corporate Membership](#): ArbitralWomen Corporate Membership entitles firms to a **discount on the cost** of individual memberships. For 650 Euros annually (instead of 750), firms can designate up to five individuals based at any of the firms' offices worldwide, and for each additional member a membership at the rate of 135 Euros (instead of 150). Over **forty firms** have subscribed a Corporate

Membership: [click here](#) for the list.

ArbitralWomen is globally recognised as the leading professional organisation forum for advancement of women in dispute resolution. Your continued support will ensure that we can provide you with opportunities to grow your network and your visibility, with all the terrific work we have accomplished to date as reported in our Newsletters.

ArbitralWomen membership has grown to approximately one thousand, from over 40 countries. Forty firms have so far subscribed for corporate membership, sometimes for as many as 40 practitioners from their firms.



Do not hesitate to contact membership@arbitralwomen.org, we would be happy to answer any questions.