



The world mourned the loss of Justice Ruth Bader Ginsburg on 18 September 2020.

Justice Ginsburg was the second woman to be appointed to the U.S. Supreme Court, the first female tenured Professor of Columbia University and the first female member of the Harvard Law Review. She fought tirelessly throughout her career to protect and advance women's rights, and civil rights and liberties. Her legacy will continue to inspire all those who work for the advancement of equality.

“Fight for the things you care about. But do it in a way that will lead others to join you”

—Ruth Bader Ginsburg

Inside Issue N° 42

UNCITRAL Resumed 53 rd Session	02
ICCA Publishes New Diversity and Inclusion Policy and Implementation Plan	32
Virtual Arbitration Platform Launched	32

ArbitralWomen events continue in virtual formats

This issue starts with a report on the UNCITRAL resumed 53rd session which was attended by five ArbitralWomen delegates. We then share reports from around 35 events that have been held between July and mid-September 2020. It is clear that ArbitralWomen members continue to participate in a broad range of webinars on substantive topics as well as promoting diversity in dispute resolution. Finally, in case you missed the news of the July-mid-September 2020 period on our website, we include it in this newsletter for you.

Launch of Arbitrator Intelligence Reports

Page 33

Report of the Cross-Institutional Task Force on Gender Diversity

Page 34

ArbitralWomen and ADGM Arbitration Centre sign MoU

Page 36

Reports on Events



Top to bottom, left to right: Fatima Balfaqeeh, Bernadette Barker, Tatiana Polevshchikova, Dr. Katherine Simpson, Liliana Veru-Torres

Report on the UNCITRAL Resumed 53rd Session

From 14 – 18 September 2020, the United National Commission on International Trade Law (UNCITRAL) held its resumed 53rd session, employing a hybrid format that included both in-person attendees in Vienna and attendees via UNCITRAL's virtual platform. The resumed 53rd Session brought together approximately 100 attendees each day. Representatives of states, non-governmental organisations, and intergovernmental organisations were in attendance.

ArbitralWomen member delegates at this resumed UNCITRAL 53rd session included **Fatima Balfaqeeh,**

Bernadette Barker, Tatiana Polevshchikova, Dr. Katherine Simpson, and Liliana Veru-Torres.

Each day featured two two-hour meetings. UNCITRAL made efforts to arrange the timing of each meeting such that those delegates who had the most to say on a given topic would be able to do so, comfortably, from their home time zone.

Below we summarise some of the issues addressed in depth. For more information, please refer to [UNCITRAL's website](#).

Railway Consignment Notes – a Need for an International Negotiable Instrument?

The Secretariat discussed the progress made in its exploratory work on legal issues related to railway consignment notes. Unlike an ocean bill of lading, a railway consignment note does not serve as a document of title and cannot be used for the settlement and financing of letters of credit. The Secretariat summarised its exploratory work on this topic and agreed with China that, indeed, there is no international negotiable instrument covering railway transport.

China had proposed in the prior session that UNCITRAL work toward developing

a negotiable transport document, which would facilitate the transport of goods



by railway in the Euro-Asian region. The member states expressed their support for UNCITRAL's continued work in this field, especially given disruptions to sea and air transport, owing to Covid-19.

UNCITRAL Expedited Arbitration Rules

Attendees discussed the proposed work on the UNCITRAL expedited arbitration rules, including whether those rules would be an Annex to the UNCITRAL Arbitration Rules and whether and how inclusion of the expedited arbitration rules as an Annex could impact interpretation of the UNCITRAL Rules. There was agreement that the explanatory notes would need to ensure consistency between the UNCITRAL Rules and the Annex containing the expedited arbitration rules.

The Working Group noted that the pandemic had stalled the process of proposing such changes. The UNCITRAL members and the members of the Working Group expressed their thanks and appreciation to the role that the Secretariat has played in preparing for this session and facilitating the meetings for the working groups amid the constraints imposed by Covid, which resulted in the Secretariat taking additional time to prepare and produce reports.

The Investor State Dispute Settlement Project (“ISDS Project”)

The pandemic has affected Working Group III's progress with respect to investor-state dispute settlement (ISDS) – also referred to as “ISDS Project” – in several ways. At this meeting, much of the deliberations centred around the potential disadvantages that virtual sessions could impose on some Members. After acknowledging the importance of the work carried out by the Working Group III, the Commission agreed in principle that further resources are required for their work on reform of ISDS. To that end, a detailed resourcing plan quantifying the resources needed will be prepared. Such plan should include how the Working Group could utilise existing resources such as work-

ing sessions, expert groups, seminars, intersessional meetings as well as other related resources including translation and interpretation of meetings. The delegations of the Working Group will be consulted with the aim to present the proposed plan in the 54th session of the Commission in 2021.

It was also agreed to continue supporting the work of Working Group III by organising two additional weeks of virtual Working Group meetings from the unused time allotted to the Commission in 2020. However, if that is not possible, the Commission would then recommend to the General Assembly to allocate two additional weeks of conference resources to hold virtual meetings of Working Group III in 2021.

Artificial Intelligence (AI) and the Digital Economy

It was generally agreed that the Commission should continue to play a coordinating role and that it is important for UNCITRAL to continue to make progress on the digital economy, including as it relates to artificial intelligence.

There are a number of programs to help member states bring their legislation and regulation in line with standard practice being developed and many of these programmes are being developed with the partnership of UNCITRAL. Several activities are planned in Africa for the end of 2020 and the early part of 2021, including a seminar on the regulation of the digital economy. The digital economy of states is viewed as being crucial for obtaining social and economic equality.

The Artificial Intelligence Expert

Group, The Council of Europe, OECD, and a number of other international organisation platforms are currently working on various aspects of digitalisation and artificial intelligence regulation.

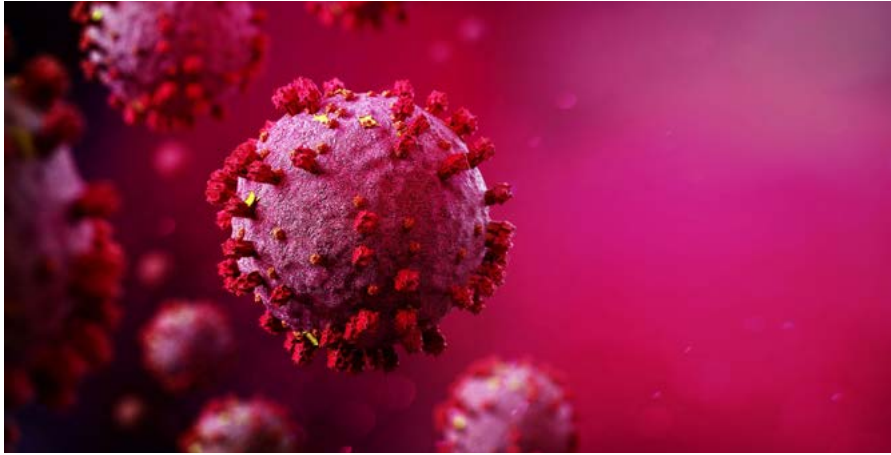
States also presented their progress in this area. For example, Hungary stated that it recently adopted a new national artificial intelligence strategy which sets out ambitious objectives, including the creation of an ethical and all-encompassing regulatory environment of artificial intelligence as well as the regulation of data sets of data transactions. Israel updated the Commission on some of the most recent events that have been organised, in particular in connection with dispute resolution in a digital economy. Israel spoke about a virtual roundtable event that had brought together 30 experts from across the world, mostly from the private sector, lawyers from private law firms, in-house counsel, arbitrators and representatives of venture capital funds, alongside government representatives. One of the questions that was posed to the experts was whether high tech disputes are unique. Another question was whether it is sufficient to adapt the legal toolbox for litigants in person to make it more relevant for litigants in high-tech disputes and whether a full upgrade is required.

Work involves addressing these legal challenges and the law needs to be looked at to create certainty in commercial transactions and how they can promote the broadest range of tools available in the digital economy.

Representatives also spoke about the importance of preserving the principle of technological neutrality.

Honduras supported the prepara-





tory work being undertaken to formulate specific proposals for the international harmonisation of legislation or guides to resolve disputes. Belgium commented that the initiatives launched by various delegations need to be practical, not just theoretical, but of use in the commercial world. One delegation commented that it is also important to develop rules which anticipate developments in the future rather than simply taking account of today's practices; to anticipate what the future may look like, because technology evolves very fast. In short, the solutions proposed need to offer security and predictability for enterprises and businesses.

Artificial Intelligence and automation of processes and transactions, occurring increasingly at global, regional, and local levels, poses real problems related to transparency (including with respect to the algorithms used) and when it comes to execution, conclusion and negotiation of valid and enforceable contracts. In interesting presentations, attendees discussed issues such as, in a contract that has been concluded via an automated system, who carries liability for errors or failures of the automated system?

Belgium has launched a study on Artificial Intelligence with the aim of assessing whether economic regulations are sufficiently appropriate to ensure the development of Artificial Intelligence. They observed that there are problems with respect to the rights and obligations of parties in relation to data transfer. Data has considerable value and transactions related to the data constitutes an ever more important part of international trade. Data is the primary material

upon which to base Artificial Intelligence.

Artificial Intelligence and technology are emerging phenomena and may considerably change the way business is done in the years and decades to come and the subject must be taken in hand now.

The Role of the Chair

At the final sessions, there was debate about the role of the Chair of UNCITRAL. The delegate from the Russian Federation questioned whether UNCITRAL was formatted as a kind of bottom-up body, where the delegates' cooperation would be facilitated by the Chair but, ultimately, all decisions would originate from the delegates or, alternatively, whether the Chair was authorised to make proposals of his own to the delegates and to request their approval.

Enlargement of UNCITRAL Membership

In addition to the role of the Chair of UNCITRAL, a potential enlargement of members was suggested for the discussion among delegates at the last day of the session. This proposal had been submitted by the Governments of Israel and Japan at the 52nd UNCITRAL session. As of September 2020, UNCITRAL is composed of **60 member states**. In these discussions, Russia, Iran, China, Singapore, Canada, Italy and Austria generally supported this idea. France expressed its willingness to help to cover travel costs of other countries to enable their participation in the Working Group III, believing that the deficit in participation is not due to the limit of seats but due to the limited resources available

in certain states. In addition, a delegate from France elaborated on importance of maintaining the current distribution of seats which reflects the balance of regional groups within UNCITRAL. Chile noted that increase of membership may lead to greater diversity and underlined the importance of ensuring that enlargement results in effective participation of new members. Switzerland highlighted the role of different legal traditions and the need to preserve the current regional representation. Finally, UNCITRAL Secretary General Ms Anna Joubin-Bret reminded that certain memberships come up for renewal at the end of 2021. In the coming meetings, UNCITRAL will discuss proposals for enlargement of the UNCITRAL Membership.

In Closing – Still Working, Despite the Pandemic

At its close, the participants noted their preference for in-person, rather than virtual meetings, as the in-person setting fostered a different style of cooperation than was possible under the strict timelines of the video conferencing. Although it was quite challenging to provide simultaneous interpretation of the hybrid session to six working languages of UNCITRAL, as well as to timely translate all relevant documents, it was demonstrated that inclusiveness and efficiency can be achieved even in times of crisis.

ArbitralWomen will notify members of opportunities to participate in UNCITRAL's exciting work.

There are opportunities for ArbitralWomen members, as individuals, to comment on the work of **Working Group III: Investor-State Dispute Settlement Reform** as it relates to Appellate Mechanism and Enforcement Issues and the Selection and Appointment of ISDS Tribunal Members (until 15 November) and on the Code of Conduct for Adjudicators of Investor-State Dispute Settlement (by 30 November 2020).

Submitted by ArbitralWomen members Fatima Balfaqqeh, Bernadette Barker, Tatiana Polevshchikova, Dr Katherine Simpson and Liliana Veru-Torres

From the beginning: political and commercial factors leading up to USMCA, on 1 July 2020, by Webinar

On 1 July 2020, ArbitralWomen member and international arbitration expert, **Carolyn Lamm**, participated in a webinar organised by the International Bar Association to discuss the political and commercial implications of the approval of the United States-Mexico-Canada Agreement (“USMCA”). The date of the event coincided perfectly with the entry into force of this international treaty.

Ms Lamm focused her remarks on Chapter 14 of the USMCA, which contains investment provisions. She began her presentation by providing historical background on the USMCA’s predecessors: the Canada-United States Free Trade Agreement (1989) and the North American Free Trade Agreement (1994) (“NAFTA”). In particular, Ms Lamm explained NAFTA’s immense influence on investment arbitration due to its broad protections and, critically, the interpretations made by arbitral tribunals constituted under it. She stressed, however, that states prevailed on the majority of cases under NAFTA, with Canada experiencing the most losses — a critical fact that would later influence Canada’s stance in negotiating the USMCA.

In the remainder of her presentation, Ms Lamm raised the question whether the USMCA in fact included significant modifications or was merely

a “NAFTA 2.0”. She first clarified that under the USMCA, the substantive protections and the right to arbitration under NAFTA would remain available for the next three years (except for certain government contracts) and its termination would not affect ongoing arbitrations.

Subsequently, she explained how the most significant impact of the USMCA was its elimination of all investor-state arbitration involving Canada. In this regard, she noted that investor-state arbitration remains available between Canada and Mexico under the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (“CPTPP”). U.S. and Canadian investors, however, will not have the option of bringing an arbitration claim directly against Canada or the U.S. unless they obtain a specific agreement to arbitrate at the time they make the investment. If not, they must rely on local courts to enforce such obligations.

Regarding substantive investment protections, a key take-away from Ms Lamm’s presentation was that they remain largely the same. Nonetheless, the ability to enforce them has been largely reduced or eliminated under the USMCA. For example, while Mexican and U.S. investors continue to be protected against indirect expropriation and are guaranteed a

minimum standard of treatment, they do not have the right to enforce such protections in an international arbitration. Like U.S. and Canadian investors seeking to bring claims against Canada and the U.S., respectively, they must rely on local courts or contract-based arbitration (if available), a significant change from the prior NAFTA regime.

Notably, Ms Lamm explained that Mexican and U.S. investors that are parties to government contracts in certain sectors retain the ability to arbitrate claims based on the same substantive protections previously available under NAFTA. Such government contracts are further exempted from new jurisdictional requirements under the USMCA that apply to other investors, including, for example, a local litigation requirement. Thus, it could be argued that they remain safely in “NAFTA 2.0 territory”.

A recording of the presentation of Ms Lamm and remaining speakers (which focused on other aspects of the USMCA) is available in the link below.



Click here to view the recording.

Submitted by Isabella Bellera Landa, Associate, White & Case LLP, Washington, D.C., U.S.A.

VIAC 4th Interactive Breakfast Webinar on “The Vienna Protocol – A Practical Checklist for Remote Hearings” on 2 July 2020, by Webinar

On 2 July 2020, VIAC hosted its 4th Interactive Breakfast Webinar introducing the newly released “Vienna Protocol – A Practical Checklist for Remote Hearings”. The Vienna Protocol was presented by **Alice Fremuth-Wolf**, Secretary-General of VIAC, **Franz**

Schwarz, Vice-President of VIAC and partner at WilmerHale, and **Patrizia Netal**, Member of the Board of VIAC and partner at KNOETZL.

The Vienna Protocol aims at providing practical guidance for arbitrators and the parties, in the form of a checklist, in

determining whether the conduct of a remote hearing is reasonable and appropriate in the specific circumstances of the case. It further provides guidance for the conduct of remote hearings where such hearing is appropriate. The persisting Covid-19 pandemic has affected

the innerworkings of international arbitration with oral hearings being most prominently concerned. It has also driven the arbitration community to adjust to this difficult environment. However, arbitrators and parties are often left alone with the decision as to whether a remote hearing may be suitable and if so, which aspects need to be considered. The Vienna Protocol builds on the experience of numerous remote hearings held in the first months of the Covid-19 pandemic and the valuable experience of the First Virtual Vis Moot.

The Vienna Protocol encourages arbitrators and the parties to apply sensible checks on the use of remote hearings by factoring in both the regulatory framework and practical implications. The regulatory framework is inherently limited as most national laws and institutional rules are silent on the permissibility of remote hearings and do not contain any specific provisions



in this regard. The VIAC Rules provide for the conduct of an “oral hearing” if a party so requests without stipulating the requirement for a hearing to be held “in person” (Art 30 VIAC Rules). They thus allow remote hearings if there is an agreement of the parties. In the absence of such agreement, it is in the discretion of the arbitral tribunal to decide whether to hold a hearing remotely through technological means.

The focus of the Vienna Protocol lies on the practical implications of remote hearings: First, it establishes possible parameters for assessing the viability of the remote hearing under the specific circumstances of the case. The Vienna Protocol further addresses considerations when selecting the hearing platform and provides guidance for the pre-hearing preparatory measures, including a specific pre-hearing organisational conference and the conduct of the remote hearing itself. A thorough preparation is indispensable for con-

ducting a successful remote hearing.

In this way, the Vienna Protocol gives parties and arbitrators an idea of what to expect from remote hearings and their preparation to satisfy the needs of the parties. Above all, it aims at safeguarding equal treatment and giving the parties a fair opportunity to present their case. At the same time, the Vienna Protocol promotes remote hearings as a viable option for conducting a hearing, regardless of the persisting pandemic, for reasons of cost-effectiveness and procedural efficiency. While first and foremost being focused on guiding the participants through these unusual and uncertain times, the Vienna Protocol is meant to have a lasting effect even beyond the Covid-19 pandemic.



Submitted by Patrizia Netal, ArbitralWomen member, Partner, KNOETZL, Vienna, Austria, and Alice Fremuth-Wolf, ArbitralWomen member, Secretary-General of VIAC, Vienna, Austria

A special regime for climate change disputes? on 7 July 2020, by Webinar

On 7 July 2020, during the Paris Arbitration Week, White & Case LLP hosted a webinar discussing arbitration’s role in resolving climate change disputes. The panellists were **Majda Dabaghi** (Director of Inclusive & Green Growth of the International Chamber of Commerce (ICC)), **Judith Levine** (Independent Arbitrator), **Ralf Lindbäck** (Managing Counsel, Wärtsilä Corporation), and **Kirsten Odynski** (Partner, White & Case). **Elizabeth Oger-Gross** (Partner, White & Case) moderated the session.

The panellists’ remarks emphasised that, even though the science on climate change is indisputable, governments are not on track to meet the goals of the Paris Agreement. Hope,



Left to right: Kirsten Odynski, Majda Dabaghi, Elizabeth Oger-Gross, Judith Levine and Ralf Lindbäck

however, still remains as business and civil society continue to take action. For example, throughout the pandemic, businesses that are focused on environmental, social, and governance issues

have outperformed their counterparts, and businesses now understand that, if they want to emerge stronger from the crisis, they will need to focus on building a sustainable business model.

Arbitrators and arbitral institutions, on the other hand, have already adapted existing frameworks to take into account the unique features of climate change disputes, and arbitration's role is expected to increase. However, arbitration may not be the most suitable forum for all climate change disputes: consent to arbitration may be lacking, and some of the cases or issues will have a distinctly local or national component. National litigation could also play a role in creating decisions of public record that can be usefully cited in other types of disputes. But there is still place for arbitration. This is especially true for commercial disputes with a transborder element, where the parties desire a neutral and flexible dispute resolution mechanism with an enforceable outcome, and have consented to such a process.

An international ad hoc arbitral body for the resolution of climate change disputes (as recommended by the IBA Task Force on Climate Change

Justice and Human Rights) would bring to the table a neutral decision-maker with appropriate expertise. It could serve a gap-filling function and provide an opportunity for more consistent decision-making. The panellists noted, however, that environmental law is not a self-contained system, and climate change disputes often arise in connection with other disputes. As such, the creation of a specialist body is unlikely to solve the problem of multiple decisions being issued in multiple fora. Climate change issues also require companies to perform risk management and contingency planning for a wide range of possible local and cross-border scenarios. Therefore, the difficulty of achieving "environmental justice" through arbitration of climate change disputes seems to centre on the question of how arbitration can repair the irreparable and what are the criteria and assessment for doing so.

The range of questions from the audience following the panellists' remarks demonstrated the keen interest of arbitration practitioners in the field of climate change disputes. The discussion concluded with the key question of how to balance the trade-off between the flexibility needed to address climate change disputes and the expertise that could be developed from a specialist decision-making body. Whether or not such a body eventually emerges, international arbitration practitioners will undoubtedly continue to test and innovate within the existing frameworks to address this growing field.

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Click here for further information.

Submitted by Elizabeth Oger-Gross, ArbitralWomen member, Partner, White & Case LLP, Paris, France and Nika Larkimo, Associate, White & Case LLP, Paris, France

ACICA45: Lifecycle of an Arbitration Series – Conducting an arbitration: interlocutory and procedural meetings, on 8 July 2020, by Webinar

On 8 July 2020, ACICA45 hosted the second event in a series of sessions aimed at de-mystifying the arbitration process for young and emerging practitioners.

This event focused on interlocutory and procedural meetings. The session was chaired by **Erika Williams** (Senior Associate, McCullough Robertson) and **Melissa Yeo** (Senior Associate, Ashurst), facilitating a discussion with international arbitration practitioners **Lucy Martinez** (Independent Counsel and Arbitrator, Martinez Arbitration) and **James Morrison** (Partner, Peter & Kim).

Topics included:

- i. negotiating the procedural timetable at the outset of the arbitration;
- ii. agendas and formats for preliminary conferences;



Top to bottom, left to right: Melissa Yeo, James Morrison, Lucy Martinez, Erika Williams

- iii. common interlocutory applications and preparation tips; and
- iv. due process issues

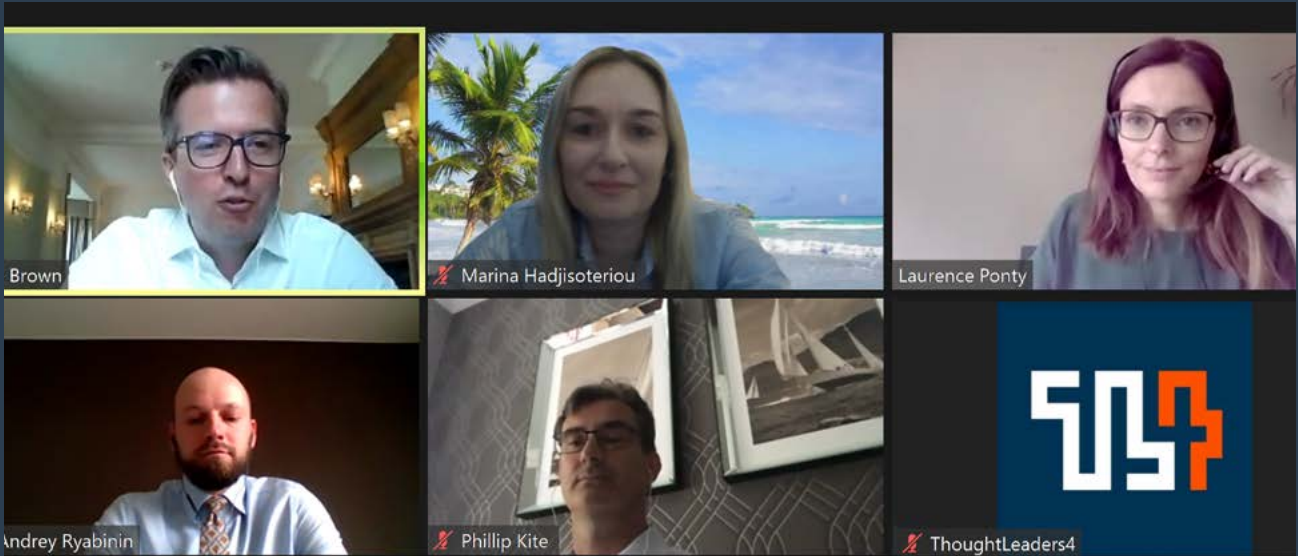
The event was recorded, and the recording is available here.



ACICA Webinars

Submitted by Lucy Martinez, ArbitralWomen member, Independent Arbitrator & Counsel, Martinez Arbitration, Australia/UK

ThoughtLeaders4Fire Virtual Event, on 8-10 July 2020, by Webinar



Top to bottom, left to right: Rick Brown, Marina Hadjisoteriou, Laurence Ponty, Andrey Ryabinin, Phillip Kite

Between 8-10 July 2020

ThoughtLeaders4Fire, organised the virtual event called “FIRE RUSSIA FSU & CEE” and “Show me the Money”. Lawyers from various countries participated in the different virtual sessions. ArbitralWomen member **Marina Hadjisoteriou**, Partner at Michael Kyprianou & Co LLC (Cyprus) had the opportunity to discuss whether offshore jurisdictions are a “*hiding place for ill-forgotten money or the vanguards of the industry*”. She was joined by **Andrey Ryabinin**, Partner – Integrites (Russia), **Phillip Kite**, Partner – Harneys (BVI) and **Laurence Ponty**, Counsel – Archipel (Switzerland). The event was moderated by **Rick Brown**, Partner – HFW (UK).

Andrey Ryabinin started talking about offshore companies in Russia. He stated that “*offshores is nothing more than an instrument... it can be used for good purposes... it can be used for bad purposes*”. He noted that there had been a change of attitude by the Russian government towards offshore companies. Basically, he clarified that this was for three main reasons: firstly, to incentivise Russian companies to repatriate. Secondly, due to the US and EU sanctions and thirdly, due to more transparency.

Concluding, he stated that “*overall the number of the offshore users from Russia has decreased, but I would say that it was not a dramatical decrease*”.

Marina Hadjisoteriou indicated that “*demonising*” the word offshore “*is not the way forward*”. She even went further to explicitly ask: “*if there is a legal way to structure a company to benefit from a beneficial tax regime, why shouldn't people just do that?*”, stating that this is “*only reasonable*”. Speaking about Cyprus, she noted that it has attracted the “*big fish of the business world*”, because of its very strategic location and beneficial tax regime. She highlighted that Cyprus is no longer considered an “*offshore jurisdiction*”, however. The island is a full member of the EU, it complies with the relevant EU regulations and has taken active steps to combat anti-money laundering.

Laurence Ponty pointed out that “*Switzerland is still nowadays the main offshore banking centre in the world*”. She stressed that the anti-money laundering mechanism in Switzerland “*is good overall*”, but it is still in “*the process of improving its system*”. She also noted that the enforcement of foreign judgments in Switzerland is “*facilitated*” by “*new tools*” which practi-

tioners can use; these relate to rules, insolvency, and civil law matters. She emphasised that Swiss practitioners have high expectations that these new tools will be used extensively to protect the interests of creditors.

The last speaker was Philip Kite, who boldly pointed out that the British Virgin Islands (BVI) are “*not offshore anymore*”. Instead, it is an “*international financial centre*”. He noted that the BVI is “*domestically independent*” but it is “*very much attached to the UK*”. He went on to say that the BVI has a “*fully functioning court system*”, but he admitted that it is not perfect. He clarified that the details of shareholders are not made public, but they are submitted to the governmental system and can be made available to other governments if needed. He pointed out that it is “*time for people to take a much more balanced approach*”.



[Click for the recording \(starting at 45:35\).](#)

Submitted by Marina Hadjisoteriou, ArbitralWomen member, Partner, Michael Kyprianou & Co LLC, Limassol, Cyprus

What's the Seat got to do with it? Paris – Brussels – Geneva/Zürich', on 8 July 2020, by Webinar



Top to bottom, left to right: Sophie Goldman, Benjamin Siino, Marteen Draye, Catrice Gayer, Joséphine Neveux, Silja Schaffstein, Marie Valentini, Eléonore Caroit

On 8 July 2020, in the context of the Paris Arbitration Week, CFA 40, Cepani 40, and ASA below 40 co-organised a webinar entitled *"What's the Seat got to do with it? Paris – Brussels – Geneva/Zürich"*. The speakers were **Marie Valentini**, Counsel at August & Debouzy (Paris), **Marteen Draye**, Partner at Hanotiau & Van Den Berg (Brussels), and ArbitralWomen member **Silja Schaffstein**, Counsel at Lévy Kaufmann-Kohler (Geneva). The discussion was moderated by **Joséphine Neveux**, Senior Legal Counsel at Bolloré Transport & Logistics (Paris).

The webinar's objective was a "battle of the seats". In particular, the panellists compared how specific issues of international arbitration law and practice are dealt with where the arbitral seat is located in Paris, Brussels, or Geneva/Zurich, highlighting similarities and differences that may inform the choice of the arbitral seat.

Following opening remarks by **Benjamin Siino**, Partner at Shearman & Sterling (Paris) and co-chair of CFA 40, the moderator and speakers were introduced by their respective "appointing authority", **Eléonore Caroit**, Partner at GDRP (Geneva) and co-chair of CFA 40, **Sophie Goldman**, Partner at Tossens Goldman Gonne (Brussels) and co-president of Cepani 40, and **Catrice Gayer**, Senior Associate at Herbert Smith Freehills Germany (Düsseldorf) and co-chair of ASA below 40.

The discussion proceeded according to the different stages of an arbitration

procedure. Starting with the arbitration agreement, Joséphine Neveux first asked the panellists about the existence of any formal requirements in their respective jurisdiction, referring in particular to the possibility of orally concluding arbitration agreements under Belgian arbitration law. She then raised the question whether and under what conditions arbitration agreements can be "extended" to non-signatories in France, Switzerland, and Belgium.

Moving on to the next stage of the arbitration process, i.e. relations between arbitral tribunals and local courts before and during the arbitration, Maarten Draye described developments in Belgium concerning the procedure for challenging arbitrators before the Belgian courts. Silja Schaffstein then clarified the position of the Swiss Supreme Court with respect to dispute resolution clauses providing for pre-arbitration processes, in particular the consequences and availability of sanctions or remedies attached to a failure to comply with such preconditions. Thereafter, the panel discussed the extent to which a party and/or the arbitral tribunal can request the assistance of the French, Belgian, or Swiss courts in the taking of evidence of a third party, including witness testimony, as well as when such assistance is sought in aid of foreign arbitration proceedings.

The last section of the webinar was dedicated to the setting aside of arbitral awards. After comparing the available grounds for challenging arbitral awards in France, Belgium and Switzerland, the


speakers discussed the statistical risk of having an award set aside in these jurisdictions, before closing with the practical question of the median duration of setting aside proceedings before the French, Belgian, and Swiss courts.

This event was organised by members of CFA-40, Cepani 40, and ASA below 40, including Eléonore Caroit, Benjamin Siino, **Janice Feigher** (Counsel at Norton Rose Fulbright, Paris), **Raphaël Kaminsky** (Partner at Teynier Pic, Paris), **Antonio Musella** (Senior Manager at Castaldi Partners, Paris), Sophie Goldman, **Sigrid Van Rompaey** (Partner at Matray, Matray & Hallet, Antwerp), Catrice Gayer, **Catherine Anne Kunz** (Partner at Lalive, Geneva), and **Olivier Mosimann** (Partner at Kellerhals Carrard, Basel).

 CFA 40

 CEPANI 40

 ASA BELOW 40

Submitted by Silja Schaffstein, ArbitralWomen member, Counsel, Lévy Kaufmann-Kohler, Geneva, Switzerland. You may contact the author [here](#)  should you have any questions or comments on this publication

InformaConnect Virtual Event, on 9 July 2020, by Webinar

On 9 July 2020, InformaConnect organised the virtual event “Arbitration and Fraud in Russia & CIS”. Lawyers from various countries participated at the different virtual sessions. ArbitralWomen member **Marina Hadjisoteriou**, Partner at Michael Kyprianou & Co LLC (Cyprus) had the opportunity to discuss about “Common structures, and challenges unwinding them”, in the context of enforcing an arbitral award. She was joined by **Mark Forte**, Partner at Conyers (BVI), **Antonia Mottironi**, Counsel at Mofrini Bitton Klein (Switzerland) and **Helene Rebholz**, Partner at König Rebholz Zechberger (Liechtenstein). The session was moderated by **Ros Prince**, Partner at Stephenson Harwood (UK).

Mark Forte started the discussion by stating that the BVI is the “incorporation centre of the universe”. He referred to the classic corporate structure as being the “Cypriot sandwich”, meaning a BVI holding company, a Cypriot investment company and the Russian operating company. He also stated that the main corporate structures focus on the enforcement of shares in the BVI companies, rather than trusts. He then referred to the availability of freezing orders and disclosure orders since the BVI is a common law jurisdiction. He added that the relevant arbitration law entitles the applicant to obtain such orders even before the arbitration is commenced.

Marina Hadjisoteriou noted that Cyprus has many Russian investors incorporating their companies in the island, mainly due to the “beneficial tax regime”. Additionally, she noted that many investors choose Cyprus because of the availability of professionals, such as lawyers and accountants, who act as nominee directors and shareholders, thus making it more difficult for the real ultimate beneficial owners (UBOs) to be traced by creditors. She however added that



Top to bottom, left to right: Antonia Mottironi, Mark Forte, Marina Hadjisoteriou, Helene Rebholz, Ros Prince

in Cyprus you can rather easily get disclosure orders against the company secretary or the nominees or against the banks — “Norwich Pharmacal orders” — if you can show that such parties have been mixed up, innocently or not, in a wrongdoing and that you need this information to identify the wrongdoer. She noted that the company structure and the whole idea of a party having a nominee holding their shares in order to “hide” could be unwound rather easily, in the right circumstances, due to Cyprus courts’ willingness to issue such orders.

Marina also added that in Cyprus, as is the case in the BVI, an injunction can be obtained in aid of foreign arbitral proceedings even before they are commenced. However, the situation is different for foreign court proceedings, as such injunction is only available if provided by a bilateral or multilateral treaty that binds the two countries. She further explained that the fact that Cypriot professionals are used as nominee directors is very important, because when an interim order is issued and served personally on such directors, they have to comply, otherwise they could face contempt proceedings, risking imprisonment. This is why, very often, orders are also secured prohibiting any changes in the structure of the board of directors of the company, to ensure that the Cypriot professionals who are very likely to comply with the orders, remain in their positions.

Helene Rebholz indicated that Lichtenstein has a “variety of corporations”, even though most people only know of the “foundations”, a legal entity that has the “special feature” of having no owner. In addition, Lichtenstein has the “private law establishment”, which is flexible, allowing for the creation of corporate structures with or without “founder rights”. Overall, she stated that there are various “flexible forms” in the country.

Finally, Antonia Mottironi discussed the situation in Switzerland, highlighting that people use Swiss bank accounts for good and bad reasons and that Switzerland is the “number one commodity hub” in the world. Regarding arbitral awards, she stated that debtors can file claims against trading companies in Switzerland, and the claims can be attached to the Swiss bank accounts. In relation to enforcement and ways of obtaining relevant information, there are two ways available: either through criminal proceedings or if a third country is also involved which is common law jurisdiction, then through such countries, in similar ways as for the BVI and Cyprus.



A recording of this session is available here.

Submitted by Marina Hadjisoteriou, ArbitralWomen member, Partner, Michael Kyprianou & Co LLC, Limassol, Cyprus

One Step Forward, Two Steps Back? Mitigating the Impact of Covid-19 on Diversity and Recognising Opportunities to Level the Playing Field, on 9 July 2020, by Webinar

On 9 July 2020, the International Centre for Dispute Resolution Young & International (ICDR Y&I) organised a webinar focusing on how potential adverse impacts of Covid-19 on diversity can be mitigated in the field of international arbitration. The webinar was supported by ArbitralWomen. Moderated by ArbitralWomen Board Member **Amanda Lee** and **M. Imad Khan**, the event aimed to address diversity issues linked to the pandemic and to identify concrete steps to overcome them. The panellists were all admittedly invested in promoting diversity issues and identified numerous concerns.

As with the credit crunch before it, the economic impact of Covid-19 threatened to have a disproportionate impact on diverse practitioners and neutrals. Some of the insights shared by the speakers and the concrete steps proposed by way of mitigation identified by them are highlighted below.

What steps are being taken by law firms to support diversity, and how can they build more diverse teams and promote equal opportunities?

Paula Hinton suggested that law firms should take proactive steps to ensure that diverse practitioners are not disadvantaged when work is distributed due to working remotely, which can be achieved by abolishing the “free market system” that often applies to workflow for young attorneys. Firms should also ensure that diverse attorneys are properly supported, for example by encouraging the firm’s Executive Committee to act as sponsors for young and diverse lawyers.

What are organisations and corporations doing internationally to support diversity?

Michael Mcilwrath explained that it is possible to ask some arbitral institutions for a supplemental list if the list



Top to bottom, left to right: Leslie Richards-Yellen, Amanda Lee, M. Imad Khan, Paula Hinton, Ann Lesser, Rafael Carlos del Rosal Carmona, Michelle Curtis Vonderhaar, Michael Mcilwrath, Luis Martinez

provided is not sufficiently diverse, in order to ensure that the party appointing a neutral has further candidates from which to choose. Further, **Michele Curtis Vonderhaar** highlighted the need to provide opportunities for diverse candidates to hold diversified positions in the organisation or corporation.

What have institutions been doing to promote diversity to date? Are such steps effective in increasing diversity and what more can be done?

Ann Lesser outlined initiatives undertaken by the American Arbitration Association (AAA) to promote diversity, such as efforts to recruit minority and female arbitrators and mediators to the AAA’s panels, launching educational programmes and establishing a diversity committee to raise awareness. She noted that, in 2019, 38% of new AAA panellists were diverse. Regarding the effectiveness of efforts by institutions more broadly, the panellists acknowledged that such efforts are appreciated. However, it was noted that parties still tend to appoint only those who are known to them, and newer and diverse practitioners tend to lose out as a result.

How is Covid-19 helping to level the playing field?

The panellists observed that one of the impacts of Covid-19 was to force the arbitration community to adjust. Overnight it became possible for event organisers to reach a broader audience, for example – cost, time and geography are no longer an obstacle to participation – and for remote working and hearing to be regarded as more viable options. It was agreed that now is the time to keep the pressure on and to work to achieve further changes.

Discussion of these issues resulted in the establishment of concrete steps: to monitor the workload offered to diverse practitioners; to guarantee minorities and young practitioners a sponsor in a position of power; to enforce established rules relating to diversity in corporations; to monitor developments and increase polling; and to share further information about diverse neutrals in order to ensure that they stand a better chance of receiving nominations.



Submitted by Thais Stella, Paralegal at PGMBM and LLM Candidate at Queen Mary University of London, London, UK

10th Green Energy Summit, on 9 July 2020, in Brdo pri Kranju, Slovenia

The 10th Green Energy Summit brought together more than 100 top energy and environment leaders, lawyers and politicians to discuss and exchange views on green transformation, technologies, strategies and legislation. **Ana Stanič** presented the opportunities the EU Next Generation Package, worth 750 billion €, brings to the energy sector and the time frame for taking advantage of these opportunities.



Ana Stanič

Submitted by Ana Stanič, ArbitralWomen member, Director at E&A Law Limited, London, UK

Enforcement of Investment Arbitration Awards in India: One Step Forward, Two Steps Back, on 10 July 2020, by Webinar

On 10 July 2020, King’s College London Forum on International Dispute Resolution, in collaboration with Triumvir Law, supported by Asia Pacific Forum for International Arbitration, organised the second webinar of the Investment Arbitration Talk Series on the topic “Enforcement of Investment Arbitration Awards

in India: One Step Forward, Two Steps Back”. The webinar was moderated by ArbitralWomen member, **Trisha Mitra** (Associate – International Arbitration – Shearman & Sterling, Paris).

The session began with opening remarks from **Anubhab Sarkar** (Partner, Triumvir Law), outlining the ethos and

purpose of the talk series. After this, the reins of the webinar were handed over to Trisha, who elaborated on the relevance of the topic and the need to address the intricacies that are involved within enforcement mechanisms of treaty awards. Going first, **Kshama Loya** (Leader, International Investment Treaty, Nishith Desai Associates, Mumbai) outlined the recent developments of enforcement of investment treaty awards in India, giving a comparative perspective with respect to the existing standards in the UK and Singapore. Even though Indian courts have thus far not been asked to enforce investment treaty awards, Kshama spoke about some judicial pronouncements that could become relevant as and when the matter arises in the future before Indian courts. This helped the audience get a sense of the lay of the land. Next up, **Jagdish J. Menezes** (Associate, Quinn Emanuel Urquhart & Sullivan, LLP, London), offered insights into the practical considerations while enforcing an investment treaty award



Top to bottom, left to right: Jagdish J. Menezes, Anubhab Sarkar, Kshama Loya, Michele Potestà, Rishab Gupta, Simon Weber and Trisha Mitra

and highlighted the significance of being tactical while forming one's enforcement strategy. As part of his enforcement checklist, he talked about "good assets in bad locations", litigation remedies as well as categories of assets that can be the subject of enforcement. In conclusion, he wished practitioners luck with their enforcement attempts ("May enforce be with you"). This was followed by an intriguing session by **Rishab Gupta** (Partner, Shardul Amarchand Mangaldas, Mumbai), who discussed the notion of sovereign debt restructuring and the possibility

of treating adverse treaty awards as a sovereign debt. He remarked that the investment treaty arbitration regime can make sovereign debt restructuring difficult. This can be a challenge for states whose economies are reeling from the current pandemic, which in turn may lead to higher defaults. Finally, **Michele Potestà** (Counsel, Lévy Kaufmann-Kohler, Geneva) spoke about the misconception that investment treaty arbitration is a tool to sanction the misconduct of domestic courts. He explained the "no recourse" approach of arbitral tribunals and discussed the

decisions in *White Industries v. Republic of India* and *Frontier Petroleum v. Czech Republic* on these themes. The webinar concluded with a vote of thanks from **Simon Weber** (Ph.D. Fellow, King's College London, Research Assistant to Martin Hunter, Essex Court Chambers).

We hope to see you at the next webinar of the Investment Arbitration Talk Series!

Submitted by Trisha Mitra, ArbitralWomen member, Associate (International Arbitration), Shearman & Sterling, Paris, France

Artificial Intelligence and the Changing Face of International Arbitration, on 16 July 2020, by Webinar



Top to bottom, left to right: Preeti Bhagnani, Rafael Carmona, José Antonio Rivas, Isabel Yang, Eric Blinderman, Luis M. Martinez

On 16 July 2020, the International Centre for Dispute Resolution and the Georgetown International Arbitration Society co-hosted a panel event moderated by **José Antonio Rivas** (Partner, Xstrategy LLP), on the emergence of artificial intelligence (AI) in the field of international arbitration, how practitioners can benefit from AI-driven tools, and the potential risks of relying on this technology.

Isabel Yang (ArbitralWomen member, Founder and CEO, ArbiLex) laid the groundwork for the conversation by explaining the fundamentals of AI. She described AI as a family of computational algorithms that is capa-

ble of automated statistical learning based on data sets. In the context of commercial and investment arbitration, Isabel argued that experienced lawyers' instincts can be translated into patterns and statistical models which can subsequently accelerate the training of junior lawyers. While these models cannot predict outcomes with one hundred percent certainty, she maintained that these tools are valuable in their ability to facilitate decision-making.

Preeti Bhagnani (ArbitralWomen member, Partner, White & Case LLP) then discussed the use of AI and predictive analytics by counsel in interna-

tional arbitration. In its present form, AI-based tools exist to simplify document review, enhance legal research, and automate legal drafting. However, survey data indicates that the use of AI by international arbitration practitioners is currently limited. Preeti shared that she has yet to attend a case management conference where the parties have discussed using AI and suggested that tribunals could play a role in providing guidance to parties who seek to rely on these tools in the future.

In addressing the topic from a funder perspective, **Eric Blinderman** (CEO, Therium), emphasised that

claimants have an interest in obtaining a rapid and cost-effective resolution to their claims. Clients are no longer willing to pay for associates to spend days poring over documents if there are tools available to significantly shorten the review process. To accommodate this, Eric suggested that law firms and practitioners use AI tools in a “disciplined” manner such that the capital they invest is commensurate with the return.

José Antonio Rivas prompted the

panellists to consider nuances of the subject area, such as the potential impact of AI on the diversity of arbitrators and ethical considerations in utilising AI tools. In responding to these questions, the panellists discussed the limitations of predictive models and the latent biases in data sets that could result in systemic errors. Isabel closed out the panel by remarking that society has created a false dichotomy between “machines vs. humans” —the AI “machine” is not some “crazy robot

in a corner”, it is merely a collection of human brainpower sourced from counsel, which ultimately aims to improve efficiencies in a system ripe for change.



The recording of the webinar is available here.

Submitted by Allyson Reynolds, Law Clerk, White & Case LLP, New York, N.Y., U.S.A.

ABA ILS Covid-19 Webinar Series – Regional Perspectives of Investor State Claims in light of Covid-19, on 17 July 2020, by Webinar

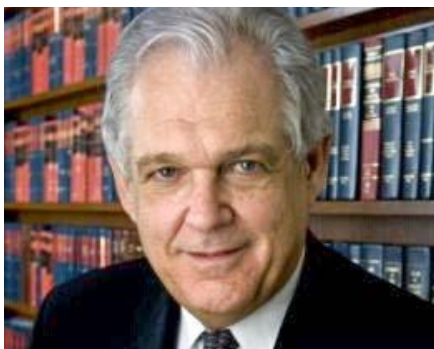
On 17 July, ArbitralWomen members **Catherine Amirfar**, **Mélida Hodgson** and **Gisèle Stephens-Chu**, along with Prof. **George Bermann** and **Barry Appleton** took part in a webinar organised by the American Bar Association’s International Law Section on Regional Perspectives of Investor State Claims in light of Covid-19. The discussion, moderated by **Maria-Camila**

Hoyos, sought to examine how the Covid-19 pandemic will impact the landscape for investment treaty disputes and treaty-making in different regions of the world.

Maria-Camila Hoyos introduced the discussion by noting that, although there are commonalities in states’ immediate responses to the pandemic, as events unfold states are adopting more

wide-ranging measures with less obvious public policy justifications. While treaty claims challenging public health measures may appear doomed to failure, some of the measures adopted by states in the wake of the pandemic do not all bear scrutiny. In addition, investment treaties vary in their deference to public interest measures and police powers.

Beginning with North America, Barry



Top to bottom, left to right: Maria-Camila Hoyos, Catherine Amirfar, Mélida Hodgson, Prof. George Bermann, Gisèle Stephens-Chu and Barry Appleton

Appleton noted that NAFTA decisions provide some experience of treaty claims involving public health concerns or economic distress. While several NAFTA and ICSID cases have focussed primarily on whether certain regulatory measures were expropriatory (adopting the sole effects doctrine), others have considered that measures taken as a legitimate and proportionate exercise of police powers were non-compensable. The jurisprudence, though leaning towards the payment of compensation, remains unsettled on this issue. Moreover, much turns on the specific wording of treaties and the scope they give governments to regulate, through exclusions or sectoral reservations that may be broad and self-judging (such as essential security interests). Going forward, Barry expected increasing politicisation of investment dispute resolution, as already illustrated by the USMCA, which limits the ability to bring claims, signalling a likely return to diplomatic protection.

Mélida Hodgson gave an overview of the measures taken in Latin America, ranging from lockdown, quarantine and border closures, to less homogeneous measures such as Peru's bill to suspend the imposition of toll fees/tariffs on major highways, in what some alleged was a breach of concession agreements. Some countries have allowed activities in specific sectors to continue, whereas others have rolled back plans to liberalise certain industry sectors. In particular, Mexico has revisited the opening of its electricity sector, introducing restrictions that some sectors claim will make it difficult for alternative energy producers to compete with established actors. Echoing some of the measures it took during its financial crisis, Argentina has frozen tariffs on utilities, as well as imposing price controls on food and medical supplies and export restrictions. With respect to the impact of the crisis on future treaty-making, she noted that states would come to realise the varying degrees of exposure they face under different generations of treaties (newer treaties providing more room for state discretion and proportionality) and perhaps be propelled to engage in efforts to reach regional or multilateral agreements, or provide for carve-outs

REGIONAL PERSPECTIVES OF INVESTOR-STATE CLAIMS IN LIGHT OF COVID-19

Amid the COVID-19 outbreak, States have taken emergency measures in containing the pandemic and boosting their economies from recession. While there is an apparent consensus in the public policy purposes of such formulae, governments must also remain conscious that their regulatory actions are not arbitrary, disproportionate, or discriminatory, in light of their existing obligations under applicable foreign investment protection frameworks. In this program, you will hear from a panel of thought leaders in Investment Arbitration who will contribute with their regional insights on the future of COVID-19 investor-state claims in Latin America, the EU, Africa, North America, Middle-East, South Asia, and East Asia.

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MODERATOR MARIA CAMILA HODÓS Counsel CMS Lisbon	CATHERINE AMIRFAR Partner DeBorja & Humpston New York	MÉLIDA HODGSON Partner Jenner & Block New York	PROF. GEORGE BERMANN Director of the Center for International Commercial & Arbitration Columbia Law School	GISELE STEPHENS-CHU Counsel Freshfields Paris	BARRY APPLETON Managing Partner Appleton & Associates International Lawyers Toronto

from dispute settlement for certain measures, such as for public debt.

With respect to Europe, George Bermann noted that, given the absence of EU competence for public health, measures had been adopted individually by Member States, with some degree of support and coordination from the EU. States' responses have included restrictions (the seizure of private production lines, import and export restrictions with respect to PPE, but also subsidies with respect to PPE, and also support to certain companies and industries designated as essential. Such measures, designed to protect nationals, raise the prospect of national treatment claims, relating not only to the relative treatment of actors in the same sector, but also to complaints that some sectors are preferred over others. Looking forward, he predicted a more intense use of proportionality by tribunals, as well as an evolution in the content of investors' legitimate expectations. The circumstances would only heighten the EU's commitment to a multilateral investment court, to ensure decision-making takes full account of compelling state interests.

Covering Asia and the Middle East, Catherine Amirfar noted two opposing trendlines: on the one hand, expansive attraction of foreign investments to stimulate economies, R&D subsidies; on the other hand, protectionist tendencies (export restrictions, price controls, stimulus and aid packages aimed at local industries and nationals) and, in the case of Taiwan, the nationalising of mask production and distribution.

Insofar as such measures treat foreign investors differently, or are expropriatory in effect, they may breach a range of treaty standards. With respect to treaty-making, she noted that the TPP contained broad language protecting policy making in the sphere of public health, predicting the adoption of similar carveouts in other future regional BITs. Other more radical responses could include the introduction of essential interests clauses, or a moving away from ISDS altogether.

In Africa, Gisèle Stephens-Chu explained that states have enacted stringent restrictions, some going well beyond strict physical containment measures, such as the banning of alcohol and tobacco in South Africa or price control measures. However, states have also sought to support private enterprise, through financial assistance programmes, while some African competition authorities have sought to promote collaborations between companies of various sectors. How such measures are deployed and justified is critical, as even positive measures in favour of investment can trigger treaty claims if applied in an arbitrary or discriminatory manner. Due to its impact on energy and mining operations and commodity prices, the pandemic was also likely to increase tensions that are already leading to an increasing number of investment arbitrations involving African state parties. Given many African investment claims are based on contracts or domestic licenses, Gisèle predicted an increasing use by states of domestic public law defences. She further noted the efforts of African states to modernise investment treaties in a manner that preserves their right to regulate, furthers socio-economic objectives and introduces positive obligations on investors. This approach to treaty-making is set to continue in the wake of Covid-19.

The recording of the webinar is available here.

Submitted by Gisèle Stephens-Chu, ArbitralWomen Board Member, Counsel, Freshfields Bruckhaus Deringer, Paris, France

ADR Online: An AIAC Webinar SPECIAL Series – Diversity in Arbitration Week: Globalising Arbitration – Enhancing Racial and Ethnic Diversity, on 17 July 2020, by Webinar

On 17 July 2020, the Asian International Arbitration Centre hosted a webinar, in collaboration with #Careers in Arbitration, titled [Globalising Arbitration – Enhancing Racial and Ethnic Diversity](#), as part of its Diversity in Arbitration Week. The webinar saw over 100 attendees with over 300 views on Facebook. The panel included ArbitralWomen members **Catherine Rogers** and **Emilia Onyema**. ArbitralWomen Board Member, **Amanda Lee**, who helped organise the session, provided the opening remarks. She emphasised the importance of having these conversations and ensuring that such continue and develop into inclusive measures. Building on this, Catherine, as the moderator, asked each of the speakers to identify what they believed made them diverse. This got the ball rolling to explore the current barriers to diversity and how they can be broken down.

Sarah Malik highlighted the need to promote diverse neutrals from developing domestic markets as well as breaking of the current system that

puts preference on appointing arbitrators with extensive track records. **Kabir Duggal** explained that we also have to consider intersectionality and how different people can experience multiple layers of barriers in their careers. After all, the barriers experienced by diverse individuals of privilege varies from that of individuals from more humble backgrounds. Emilia then went on to explain that if the arbitrators in the matter do not have local knowledge, they may fail to grasp the bigger picture of the dispute, and they may also suffer from prejudices that affect their decision-making. **Darius Chan** then pointed out that when appointing an arbitrator, there is a system of first looking at the attributes for the given case and then deciding who fits the bill. Nevertheless, many clients want those with repeat appointments and proven track records. This needs to be disrupted by using the information available to explain why diverse panels can benefit the clients' needs. **Thiago Del Pozzo Zanelato** highlighted that studies have shown



ASIAN INTERNATIONAL ARBITRATION CENTRE

that diverse teams perform better because the different views brought to the table help strengthen business strategy. Similarly, having a linguistically and culturally diverse tribunal, as opposed to a 'male, pale, and stale' tribunal, may enable a better understanding of the dialects and accents of witnesses from other regions of the world, not to mention that bilingual arbitrators may have the added advantage of being able to comprehend documents submitted in languages other than English.

In recognising the importance of these discussions, Catherine explained that the long-term goals need to focus on ensuring that there is access to education, events, and speaking opportunities that are outside the hubs. She also pointed out how Asia – and hopefully Africa and Latin America, in time – in recent years has been successfully challenging and competing with the western seats. The session closed with a stimulating Q&A session, in which the speakers' overall message was that we need to shake up the system and start asking how we can do things differently to ensure we create a more diverse, inclusive and thereby more robust international arbitration practice globally.

Submitted by ArbitralWomen members Chelsea Pollard, International Case Counsel, and Nivvy Venkatraman, Senior International Case Counsel, Asian International Arbitration Centre, Kuala Lumpur, Malaysia



Top to bottom, left to right: Darius Chan, Catherine Rogers, Amanda Lee, Thiago Del Pozzo Zanelato, Kabir Duggal, Emilia Onyema, Sarah Malik.

THAC ADR Webinar Series 2020

Series 4: Due Process Paranoia: Dilatory Tactics and their impact on international arbitration efficiency, on 6 August 2020, by Webinar



Left to right: Janice Lee, Vanina Sucharitkul, Michael Hwang, Victor Leginsky, Steve Ngo

As part of its ADR Webinar Series 2020, on 6 August 2020 the Thailand Arbitration Centre (THAC) organised a panel discussion entitled “*Due Process Paranoia: Dilatory Tactics and their impact on international arbitration efficiency*” and moderated by **Janice Lee**, Associate, Eversheds Harry Elias.

Vanina Sucharitkul, Global Events Director ArbitralWomen, Professor, Université Paris Descartes, began the discussion with a presentation on ‘guerrilla tactics’, describing three categories – ‘rough riding’, ‘common guerrilla tactics’ and ‘guerrilla talibans’. Drawing from her experience as counsel, she provided examples of guerrilla tactics that are used in Thailand such as the use of immigration and work permit laws and baseless challenges to arbitrators, and discussed their adverse effect on Thailand’s reputation as a seat of arbitration. Stressing that the onus of curbing guerrilla tactics should not fall only on the tribunal, she suggested ways in which arbitral institutions could respond to such tactics – including by shifting the burden of costs for delays, imposing filing fees for challenges to arbitrators so as to deter frivolous challenges (as done by the SIAC), or issuing duties and

guidelines for the conduct of counsel.

Michael Hwang SC, Chartered Arbitrator, described two cases that illustrate the strategies that tribunals could use to curb guerrilla tactics. First, in *China Machine New Energy Corp v. Jaguar Energy Guatemala*, the Singapore High Court refused to set aside an award on the alleged ground that guerrilla tactics had been used in violation of the duty to conduct arbitration in good faith, since this was not recognised as a ground for setting aside an award, unless guerrilla tactics were so extreme as to breach public policy. The court’s finding that the conduct in this case did not amount to guerrilla tactics was assisted by the tribunal’s detailed and careful reasoning for each procedural decision it had taken — a phenomenon he called ‘defensive arbitration’. Secondly, the *Libananco Holdings v. Turkey* arbitration — in which he had

been a member of the arbitral tribunal — demonstrated how the tribunal could extract assurances and pass orders to prevent further guerrilla conduct to protect the litigants’ rights.

Victor Leginsky, Chartered Arbitrator, Arbitralis, focussed on guerrilla tactics in the Middle East. He first observed, based on the ‘rule-based’ legal tradition of the Middle East, that the duty of good faith could work well in that region. Commonly used guerrilla tactics in the Middle East included bribery, forgery, suits against arbitrators, arbitrator challenges, and excessive disclosure of documents or ‘document dumps’ – some of which could be self-defeating. Tribunals could address such tactics by instituting an acceptable framework for conduct, a workable style of advocacy and a procedural timeline at the very beginning of proceedings.

Steve Ngo, President of the Beihai Asia International Arbitration Centre, invited participants to consider that there might be two sides to each story. While observing that respondents would typically have an interest in ending the litigation, he suggested it would be unfair to suggest that respondents were always the villains. He concluded that clever counsel would know their limits and conduct themselves within an acceptable framework. Equally, a smart arbitrator would be able to curb these tactics when necessary.

Submitted by **Vanina Sucharitkul**, Global Events Director ArbitralWomen, Professor, Université Paris Descartes, Paris, France



Arbitrators' and Mediators' Institute of New Zealand (AMINZ) "Remote" Conference 2020, 6-7 August 2020, by Webinar

Like so many arbitration conferences this year, the AMINZ Conference was held online, on 6-7 August 2020, and covered a range of domestic and international topics.

ArbitralWomen members **Nicole Smith** and **Judith Levine** were joined by **Nicola Swan** to introduce and explain the contents of the ICC Arbitration and ADR Commission Report on Resolving Climate Change Related Disputes through Arbitration and ADR (the ICC Climate Change Report), which was developed and produced by the ICC Arbitration and ADR Commission's task force of which the speakers are all members.

Nicole presented from Tauranga (New Zealand), Nicola, from Wellington (New Zealand) and Judith from Sydney (Australia). This was an example of how closing borders can sometimes cause us to collaborate more rather than less.

With wildfires raging in California, and with so many hurricanes raging in the Atlantic that they have run out of names for them in 2020, climate change is a topic that we should not overlook, even as our daily focus is on dealing with the "new normal" of lockdowns, border closures and working from home.

The ICC Climate Change Report looks at current and potential use of arbitration for resolving climate change disputes and makes recommendations for the use of experts, the



option of using existing techniques for early and urgent resolution of disputes (or discrete issues), as well as how to encourage transparency in proceedings and engaging with third parties.

Nicole set out the background to the ICC Climate Change Report and the involvement of the New Zealand National Committee —and ArbitralWomen member **Wendy Miles QC**— in proposing the creation of the Task force on Climate Change within the ICC Arbitration and ADR Commission. Judith gave examples of international arbitrations that have dealt with climate change issues, including cases that she had been involved with during her time at the Permanent Court of Arbitration. This included a review of how climate change issues are affecting interstate disputes and how they are arising in investor-state disputes.

Nicole explained the recommendations relating to early and urgent resolution of disputes and Nicola worked through the considerations of how obligations to reduce climate change are becoming part of financial instruments, BITs and the relevance of those obligations to termination rights (such as *force majeure* and frustration).

Dealing with the interaction between dispute resolution and climate change issues is an area of particular interest to Nicole, Judith and Nicola (and also Wendy) and they would be happy to collaborate with other ArbitralWomen members on future presentations or discussions.

Submitted by Nicole Smith, ArbitralWomen member, Barrister specialising in commercial litigation and arbitration, Mauao Legal Chamber, Mount Maunganui, New Zealand

9th Baltic Arbitration Days 2020, on 16 and 17 August 2020, in Riga, Latvia

On 16 and 17 August 2020, the 9th Baltic Arbitration Days 2020 took place in Riga as an onsite and online conference. The conference, planned and staged by **Theis Klauberg**, Klauberg BALTICS, was attended by around 60 delegates in person and

more than 670 delegates online.

On the first day, moderated by **Ilze Dubava**, State Chancellery of the Republic of Latvia, three renowned arbitration practitioners delivered keynote speeches: **Jennifer Kirby** pointed out the immense power of an

arbitral award which cannot be challenged on the merits and is enforceable worldwide, reminding arbitrators of their considerable responsibility. ArbitralWomen member **Dorothee Ruckteschler** shared reflections on the reasons for the emergence of

Delegates at the 9th Baltic Arbitration Days

international commercial courts and raised the question whether they really serve the needs of the users. **Lord Philipps** fascinated the audience with his reminiscences on sixty years in the world of law and his spectacular career.

On the second day four panels discussed various hot topics. The first panel dealt with arbitration in transport-related disputes and focussed on the often very important question of whether or not the arbitration clause in a Bill of Lading can be extended to the shipper who is not privy to the contract. During the second panel (Arbitration and IT), it was reported that Finland is aiming at fully-automated decision-making in the near future in cases where no discretion is involved. The third panel (third-party funding in arbitration disputes in CEE) triggered critical questions regarding the involvement of the third-party funder in

the way in which the dispute is handled by the funded party and its counsel. Finally, in the last session – Investment arbitration update-, the panel discussed the Investor-State Dispute Settlement (ISDS) reform process of UNCITRAL, the IBA Guidelines on Conflict of Interest in International Arbitration, as well as the state of ISDS in a pandemic world. In addition, **Boris Karabelnikov** delivered a very critical summary on the new Russian law granting Russian state courts exclusive jurisdiction over all disputes involving sanctioned Russian entities and individuals, as well as foreign entities controlled by them, regardless of the choice of jurisdiction in their contracts. In his view, this is an invitation to Russian businesses to breach jurisdiction agreements and in particular arbitration clauses in order to move their disputes to Russian state courts.

The conference was a remarkable event featuring very diverse and very dedicated moderators, speakers and panellists. And last but not least, it was surrounded by wonderful social events on the beach of Jurmala and on the river Daugava.

The 10th Baltic Arbitration Days 2021 are already scheduled (9/10 June 2021) and should not be missed!



IBA Guidelines on
Conflict of Interest in
International Arbitration



Click here to access two
of the keynote speeches

Submitted by Dorothee Ruckteschler, ArbitralWomen member, Partner, CMS Hasche Sigle, Stuttgart, Germany

How New is the New Normal? Are virtual arbitrations really all that new? A conversation with Neil Kaplan CBE QC SBS, on 18 August 2020, by Webinar

On 18 August 2020, ArbitralWomen Board Member **Donna Ross** FCI Arb interviewed **Neil Kaplan** CBE QC SBS in a 'virtual fireside chat' organised by Resolution Institute's Victorian Arbitration Group. Holding key roles in major institutions around the world, Neil imparted his expansive experience in virtual hearings including pre-Covid-19, such as during SARS, as well as on new rules and guidelines.

Online hearings are on the rise

everywhere. One salient example of this is of is at HKIAC where over 50% of hearings scheduled through the end of this year will be virtual. These and other statistics were provided along with the [HKIAC Report on the Impact of Covid-19 and Virtual Hearings in Arbitrations: A Response to Frequently Asked Questions](#) (in Chinese and English), with **Sarah Grimmer's** kind permission.

New developments in arbitral

rules include Articles [14.6](#) and [19.2](#) of the [LCIA Arbitration Rules \(effective 1 October 2020\)](#) that allow a tribunal to use technology to enhance the efficiency and expeditious conduct of hearings, and specifically allow for virtual hearings as well as Section III of the [ICC Guidance Note on Possible Measures Aimed at Mitigating the Effects of the Covid-19 Pandemic](#), on their organisation, especially with respect to the tri-

bunal's authority to proceed with a virtual hearing.

The challenging question of procedural fairness in circumstances where the parties do not consent to a virtual hearing — but the tribunal so orders — was posed. This can be a dilemma for a tribunal that either has a statutory obligation or a duty under the applicable rules to conduct the arbitration taking account of expense or delay. Whether a tribunal should disallow an agreement between the parties to postpone for an unknown period would have to be a case-by-case decision and may depend on the jurisdiction and rules.

A good part of the discussion focussed on case management techniques and the importance of a reliable internet connection.

Neil shared a number of pointers, including some from the [HKIAC Guidelines for Virtual Hearings](#), such as providing electronic documents in advance of the hearing, having a host — or perhaps tribunal



secretary — assist with testing and ensuring the technology and connection at the physical venue work properly and 360-degree viewing of the room or an invigilator to address concerns about witness testimony and cross-examination.

More novel, albeit not completely new concepts were scheduling shorter hearing days or asynchronous hearings to accommodate different time

zones. Neil also suggested pre-recording opening statements to allow each side to listen at a convenient time.

A less known recommendation by Neil was the [Inns of Court College Advocacy's Principles for Remote Advocacy](#). Although not designed specifically for arbitration, it is a useful handbook to help advocates improve their online communication and persuasion skills.

Another most valuable contribution was the [Template Virtual Hearing Protocol](#), of which Professor Doug Jones is the principal author.

We are grateful to Neil for generously sharing these documents and his vast knowledge in his habitually entertaining and edifying manner that made the hour go by much faster than many of us would have wished.

Submitted by Donna Ross, ArbitralWomen Board Member, Principal, Donna Ross Dispute Resolution, Chair of Resolution Institute's Victorian Arbitration Group, Melbourne, Australia

Res Judicata and Lis Pendens in Investment Arbitration, on 20 August 2020, by Webinar

From 17 to 22 August 2020, the [Athens Public International Law Center \(Athens PIL\)](#) at the National and Kapodistrian University of Athens and the Athens chapter of the European Law Students Association ([ELSA Athens](#)) co-organised the 5th Summer Law School on International Investment Law, bringing together 77 students from 31 different countries. Due to the Covid-19 pandemic, this year's edition exceptionally took place in a virtual format.

Over the course of six days, a series of webinars took place on a variety of topics in the field of international investment law and arbitration, including international investment law and human rights, investment arbitration under the ICC Arbitration Rules and under the ICSID Convention, the origin and evolution of investment treaty standards, MFN clauses and umbrella clauses in

investment treaties, compensation and damages in investment arbitration, challenges to and enforcement of investment treaty arbitration awards, and the future of international investment law, to name but a few.

The academic programme also included interactive workshops in cooperation with [Young ICCA](#) and [ICDR Y&I](#), for instance on emergency arbitrators and provisional measures, evidence, and counterclaims in investment arbitration, as well as on how to draft a request for arbitration and cross-examine a witness.

As part of the webinar series, on 20 August 2020, ArbitralWomen member **Silja Schaffstein**, Counsel at Lévy Kaufmann-Kohler, addressed the topic of "*Res Judicata and Lis Pendens in Investment Arbitration*". Her presentation began by exposing the problem of

overlapping jurisdictions in investment arbitration. She then discussed whether and how this problem can be dealt with through the doctrines of *res judicata* and *lis pendens* (and related doctrines) as developed by international courts and investment arbitral tribunals. Finally, she closed the webinar with a discussion of other potential mechanisms of coordination of overlapping jurisdictions that may also be relevant in investment arbitration, including *electa una via* (fork-in-the road and waiver) and comity.

You may contact the author [here](#) if you are interested in receiving a copy of her presentation entitled "*Res Judicata and Lis Pendens in Investment Arbitration*" or have any questions or comments.

Submitted by Silja Schaffstein, ArbitralWomen member, Counsel, Lévy Kaufmann-Kohler, Geneva, Switzerland

10 years after Arab Spring: is fighting corruption a reality or a dream? on 26 August 2020, by Webinar

On 26 August 2020, the IBA Anti-Corruption Committee, with the support of the IBA Young Lawyers Committee and the IBA Arab Regional Forum, organised and hosted a webinar entitled "10 years after Arab Spring: is fighting corruption a reality or a dream?" The webinar brought together a panel of distinguished practitioners from countries in the MENA region to explain how different governments have responded to upheavals caused by the 'Arab Spring', particularly in connection with fighting corruption. The session was particularly focused on Tunisia, Egypt, Yemen, Libya, Syria and the UAE.

The moderator, **Zeina Obeid**, Senior Associate, Obeid Law Firm, Beirut, Lebanon, opened the well-attended session. She invited the speakers to provide an evaluation of the situation 10 years after the revolution and address the main challenges encountered in fighting corruption. **Sami Houerbi**, Director, Mediterranean, Middle East and Africa, ICC, Paris, France, noted the progress that has been made with fighting corruption in Tunisia, the country at the origin of the Arab Spring. However, he highlighted the challenges relating to the deeply rooted corruption particularly in public administrations and the judicial system and the resistance to change. **Ibrahim Shehata**, Partner, Shehata & Partners, Cairo, Egypt, discussed the various challenges in Egypt, but noted that active efforts to attract



Top to bottom, left to right: Farouk El Hosseney, Ibrahim Shehata, Sami Houerbi, Zeina Obeid, Jiyoung Bae, Horacio Bernades Neto

FDI had resulted in improvements overall. On the other hand, **Farouk El Hosseney**, Senior Associate, Three Crowns, London, UK, noted that Yemen, Libya and Syria, due to the civil wars raging there, have created hospitable conditions for corruption. This has resulted in a 'power vacuum' giving rise to disputes over who represents the state and state entities. Regarding the UAE, **Jiyoung Bae**, Head of Dubai Office, Bae Kim & Lee, Dubai, UAE, described the country's relatively successful experience in fighting corruption, although she noted some recent AML cases involving the country.

The speakers noted that countries such as Tunisia, Egypt and UAE have and continue to adopt measures and enact legislation designed to increase transparency, integrity and accountability of the government. However, Sami Houerbi highlighted possible challenges faced by ad hoc tribunals, whereas Ibrahim Shehata noted that risks arise with the implementation of laws in this field. As for countries in the region

facing civil wars, Farouk observed that governments have more pressing priorities than fighting corruption.

The speakers concluded that political will and enforcing the rule of law were the key pillars of the fight against corruption and ensuring it became a reality.

Horacio Bernades Neto, President, International Bar Association, who honoured the event with his presence, discussed the IBA and lawyers' role in fighting corruption through activities to influence legislation and to enforce the rule of law on a day-to-day basis. He praised the youth of Beirut for initiating a strong movement against corruption.



Click here to access a recording of the webinar

Submitted by Zeina Obeid, IBA Anti-Corruption Committee Middle Eastern Representative, Senior Associate, Obeid Law Firm, Beirut, Lebanon

8th East Africa International Arbitration Conference on 26–28 August 2020, by Webinar

On 26–28 August 2020, the East Africa International Arbitration Conference held its 8th annual edition virtually, organised by ArbitralWomen member **Elodie Dulac** together with prominent African arbitration practi-

tioners **Agnes Gitau**, **Wairimu Karanja** and **Leyou Tameru**. The theme this year was "Disruption and innovation in international arbitration in Africa". On the eve of the main conference, 26 August, EAIAC organised a Career

Day for young practitioners, during which speakers including **Madeline Kimei** and ArbitralWomen members Dr. **Emilia Onyema** and **Amanda Lee** gave advice for young and aspiring practitioners, while Prof. Dr. **Mohamed**



Top to bottom, left to right: Agnes Gitau, Amani Khalifa, Milly Jalega Odari and Emilia Onyema.

Abdel Wahab offered the perspective of a pioneer arbitrator. The first day of the conference covered topics ranging from emerging areas in African disputes and game changing trends in Africa’s investment and trade flows (including the AfCFA and green economy), to fraud and corruption in arbitration. There was also a session on diversity in arbitration,

during which ArbitralWomen member **Amani Khalifa** spoke about gender diversity and the ERA Pledge, while Dr. Emilia Onyema discussed diversity for Africans in arbitration. On 28 August, technology and innovation in arbitration were discussed, in particular virtual hearings, from the perspectives of legal counsel (**Faith Macharia**, of Anjarwalla

& Khanna), arbitrators (Prof. Mohamed Abdel Wahab) and African centres (Dr. **Fidèle Masengo** of KIAC, Rwanda and **Dipna Gunnoo** of MARC, Mauritius). The second day of the conference also included a session on avoiding pitfalls with respect to *force majeure*, contract re-negotiations and settlement in light of Covid-19 and arbitrator bias and challenges. EAIAC concluded with the second edition of the Africa Arbitration Awards. The winners were **Dorothy Ufot**, African Arbitrator of the Year and **Madeline Kimei**, Young African Arbitrator of the Year.

The event was attended by over 300 participants from around the world.

[Click here to view a recording of the event.](#)

Submitted by **Elodie Dulac**, ArbitralWomen member, Partner, King & Spalding, Singapore

Diversity in post-pandemic arbitration: opportunity for new faces? on 27 August 2020, by Webinar

On 27 August 2020, the Guatemalan Chapter of the Spanish Arbitration Club (CEA) hosted a webinar on “Diversity in post-pandemic arbitration: opportunity for new faces?” with the participation of ArbitralWomen Board Member **Rebeca Mosquera** (Akerman, New York, US), **Sophia Villalta** (Batalla, San José de Costa Rica, Costa Rica) and **Veronica Sandler** (Professor of Law at the University of Buenos Aires, Buenos Aires, Argentina). **Kleify González** (G&G Abogados Asociados, Guatemala) was the moderator of this panel.

Each panellist shared their views, based on their own regional experience, on how the pandemic has changed the rules of the game and brought different opportunities for those who are seeking to get involved or increase their development in the field of arbitration. It was



a remarkable opportunity to listen to the insightful perspectives and relevant career advice from these

Latin American women leaders in the field.

ArbitralWomen Board Member **Rebeca Mosquera** shared her experience and challenges working as a foreign lawyer, with interesting feedback on the appearance of new scenarios that can help achieve greater exposure, mainly for women and young practitioners.

Sophia Villalta and **Veronica Sandler** highlighted the impact of the pandemic on arbitration practice and spoke about how such transformation can be used to keep promoting diversity, increase networking connections and to develop a more effective professional exposure.

Submitted by **Emily Horna Rodríguez**, Head of the Litigation and Arbitration Practice at Estudio Santivañez Abogados, Lima, Peru

Force majeure, Hardship, Frustration & Related Doctrines: Comparative Views from Europe, the Middle East and the Americas, on 3 September 2020, by Webinar

Force Majeure, Hardship, Frustration and Related Doctrines: Comparative Views from Europe, the Middle East and the Americas

Speakers:

- Maria Beatriz Burghetto** (Independent arbitrator)
- Michael Polkinghorne** (White & Case)
- Dr. Pascale Accaoui-Lorfling** (Associate Member, CREDIMI)
- Peter Rosher** (Reed Smith)
- Sara Koleilat-Aranjo** (Al Tamimi & Company)

Logos: AL TAMIMI & CO., ReedSmith, WHITE & CASE, CREDIMI

aspects, including a comparison to equivalent model clauses. Finally, the speakers referred briefly to the new ICC *force majeure* and *hardship* model clauses and provided drafting tips for different types of contracts (energy, distribution, hotel management, construction, international sale of goods contracts, etc.).

One of the takeaways of this webinar is that parties need to look at the law applicable to their contract and the way tribunals interpret it when trying to establish whether one of the concepts discussed applies to their contract. Additionally, at the drafting stage, they need to be aware of the different approaches to these questions, not only between common and civil law systems, but also amongst different legal systems, and the subtleties that may distinguish one system from another one, in order to be able to choose the most suitable law and possibly supplement it with their own contractual provisions.



Click here to access the webinar recording.



Click here to download the slides.

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

In this webinar organised by the CREDIMI (the Research Centre on the Law of Markets and International Investment, affiliated with the University of Burgundy), the speakers, who come from both civil and common law backgrounds, provided a comparative analysis on the application of *force majeure*, hardship, frustration and other related doctrines in connection with commercial agreements. **Pascale Accaoui-Lorfling** (ArbitralWomen member, PhD, Associate Member, CREDIMI) moderated the webinar and introduced the concepts of *force majeure* and hardship, with a focus on continental European civil law systems. **Michael Polkinghorne** (Partner, White & Case) dealt with the (contractual) approach of common law systems to both *force majeure* and hardship and described the common law doctrines of frustration and commercial impracticability. **Maria Beatriz Burghetto**

(ArbitralWomen Board Member, independent lawyer and arbitrator) highlighted the specificities of Latin American civil law systems in this area, with a focus on Argentina, Brazil and Colombia, including the adoption of the doctrine of frustration by Argentina and Brazil. **Sara Koleilat-Aranjo** (ArbitralWomen Board Member, Senior Associate, Al Tamimi & Company) described the position under certain Middle East legal systems, where although civil law predominates, it can be combined with Sharia law to a certain extent, depending on the country, and may also include laws specific to offshore common law jurisdictions. **Peter Rosher** (Partner, Reed Smith), after mentioning the steps that parties are advised to follow when considering the question of whether *force majeure*, hardship or another doctrine applies to their contract, analysed the FIDIC Model Clause in its substantive and procedural

Tribunal Secretaries: Uses and Misuses, on 8 September 2020, by Webinar

On 8 September 2020, ArbitralWomen members **Niuscha Bassiri** of Hanotiau & van den Berg and **Dr. Katherine Simpson** of Simpson Dispute Resolution, along

with **Jeremy M. Bloomenthal**, discussed "The Use and Misuse of Tribunal Secretaries" at an event organised by **Matthew Draper** of Draper & Draper, for the United States Council

for International Business ("USCIB")/ ICC Sole Practitioner's Group, as part of the USCIB/ICC USA Fall Arbitration Series. The purpose of the panel was to explore how tribunal secre-







Left to right: Matthew E. Draper, Niuscha Bassiri, Jeremy Bloomenthal, Katherine Simpson

taries, broadly understood, are often engaged by sole arbitrator and three-member arbitral tribunals seated in Europe and elsewhere, while perhaps less often in North America. The panel examined possible reasons for this disparity and explored complicated issues of hiring and tasks that are appropriate for a tribunal secretary. Matthew Draper designed the programme as one to provide practitioners with information about the position and processes.

Niuscha Bassiri served as moderator and contributed insights earned as a former tribunal secretary, as arbitrator, as the driving force behind the Young ICCA Guide on Arbitral Secretaries (2015) and as part of the counsel team that has sought annulment of the Yukos awards since November 2014, based in part on the alleged activities of the tribunal assistant. She also shared her perspective as an arbitrator who has appointed tribunal secretaries and generously provided her draft

model terms of appointment that she and partners at her firm use in their cases, to the 72 attendees. Jeremy M. Bloomenthal spoke about his experience based on several years working as tribunal secretary in commercial and investor-state arbitrations administered by a number of different institutions or conducted *ad hoc*. Dr. Katherine Simpson, who has over 10 years of experience as tribunal secretary in complex disputes under various institutional and *ad hoc* rules, focussed her presentation on the requirements of the ICC Rules and the ICC’s 2019 Note to Parties and Arbitral Tribunals on the Conduct of the Arbitration Under the ICC Rules of Arbitration (“ICC Note”). She provided the audience with a sample draft undertaking in line with paragraph 181 of the ICC Note, which she noted should be modified according to the needs of the case. The panellists also noted that the ICC Secretariat may be consulted regarding the appropriate tasks of a tribunal secretary, under

paragraph 188 of the ICC Note. The programme was a success and future presentations, including those related to engagement and remuneration of tribunal secretaries, might be in the works!

-  [Young ICCA Guide on Arbitral Secretaries.](#)
-  [Draft model terms of appointment.](#)
-  [ICC Note.](#)
-  [Sample Administrative Secretary Declaration.](#)

Submitted by Dr. Katherine Simpson, ArbitralWomen member, Arbitrator, Simpson Dispute Resolution, Ann Arbor, Michigan, US

Construction Claims in Times of Covid-19, on 9 September 2020, by Webinar

On 9 September 2020, White & Case, in collaboration with the Center for International Investment and Commercial Arbitration Pakistan (“CIICA”), hosted an online webinar to discuss the impact of Covid-19 on construction projects in Pakistan and the wider region. The key issues that were discussed included, amongst other things, the impact of Covid-19 on con-

struction projects; in particular road projects involving state-owned entities; key legal and contractual considerations with respect to a Covid-19 claim and practical steps that a party should take when dealing with a Covid-19 claim.

The key theme throughout the webinar focused on how construction parties can proactively protect themselves to limit financial and litigation risk. For

instance, **Haroon Niazi** (Partner, HKA) explained that proactive steps can be taken by contractors to reduce Covid-19 related risks in the context of construction claims. Such measures could include, for instance, the use of daily attendance records for construction staff; the monitoring of subcontractors to ensure an aligned approach to safeguarding against Covid-19 risks and a

strong emphasis on transparency with all stakeholders. Such measures, Haroon Niazi said, will limit the impact of unintentional logistical difficulties. **Khwaja Hamid Mushtaq** (Deputy Director, National Highway Authority of Pakistan) also provided a helpful overview of how the Pakistan government is pursuing adequate measures to ensure that construction projects are conducted in a safe and Covid-19-secure environment.

Separately, questions were raised by members of the audience as regards the legal risks connected to construction projects in the context of Covid-19. A key focus here was whether legal mechanisms, such as the doctrine of frustration and *force majeure*, could be used to suspend, cancel or terminate construction projects and/or contracts. **Ibaad Hakim** (Partner, White & Case LLP) set out a general overview of the law surrounding frustration and *force majeure*, and how such measures may be used in the context of Covid-19. For instance, while *force majeure* is more of a civil law concept, common law jurisdictions—such as Pakistan—recognise the applicability of the doctrine so long as it is expressly reflected in the construction contract. However, the doctrine of frustration

can be relied upon even if not expressly referred to in the construction contract. Nonetheless, it was stressed that a party will have to prove that performance of the contract is impossible due to circumstances beyond their control, and that the parties did not envisage such circumstances when entering into the contract. Mere hardship or inconvenience will not allow parties to utilise the doctrines of frustration or *force majeure* to cancel their contractual obligations. **Antonia Birt** (Partner, Curtis Mallet-Prevost Colt & Mosle LLP) addressed various typical contractual tools available to contractors when faced with delay or increased costs due to Covid-19. Contractors were reminded to notify any

available claims under their contracts to obtain maximum protection, in particular while impacts of the pandemic are still crystallising. Antonia Birt also shared some practical tips for contractors to stay on top of their contractual notice and claim requirements while busy dealing with the impacts of the pandemic.

With thanks to both White & Case LLP and **Michael Turrini** (Partner, White & Case LLP) for organising and moderating the event.

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



Antonia Birt

DIS40 Munich, Dos and Don'ts of Arbitrator Challenge, on 9 September 2020, by Webinar

DIS40 Munich goes virtual!

On 9 September 2020, the Munich chapter of the Initiative of Young Arbitrators of the German Arbitration Institute (DIS40) held its first webinar on the very practice-oriented topic of the challenge of arbitrators. **Michael Wietzorek**, Associate at Taylor Wessing in Munich, and **Julia Klesse**, Counsel at GLNS in Munich, led the discussion. Both, Michael and Julia, have long-standing experience in national and international commercial arbitration proceedings. The webinar was organised by **Nadine Lederer**, Senior Associate at Hogan Lovells in Munich, and **Christian Stretz**, Attorney at Ego Humrich Wyen in Munich, DIS40

regional co-chairs for Munich.

In the first part, the speakers mainly focussed on arbitration proceedings under the Arbitration Rules of the German Arbitration Institute (DIS), seated in Germany. Michael first pointed out the main sources in connection with the neutrality of arbitrators and analysed the theoretical meaning of the most relevant terms. He further explained that in order to secure the neutrality of the arbitrators as one of the core values of arbitration, there exists a multi-step system, beginning with the selection of the arbitrator, the obligation of the arbitrator to disclose all facts that are likely to give rise to doubts of its inde-

pendence or impartiality, the option to challenge an arbitrator in case such doubts are justifiable and last the option to challenge an award on the basis of arbitrator bias. As regards the distinction between facts that should be disclosed and those that justify the challenge of an arbitrator, Julia pointed to some important changes that were introduced in the “new” DIS Rules, which came into effect in March 2018. The speakers agreed that while, in theory, the meaning of the relevant terms is clear, in practice, their application oftentimes is not straightforward. As a first tool to colour the terms, Julia introduced the well-established [IBA Guidelines on Conflicts of Interest in](#)



Left to right: Julia Klesse, Michael Wietzorek, Nadine Lederer, Christian Stretz

[International Arbitration \(2014\)](#) and explained their content and nature.

The first part of the webinar concluded with a number of practical examples of cases in which courts ruled on the obligation of disclosure and the grounds for arbitrator challenges. The speakers thereby focussed on the common situation where an arbitrator has or had a business relationship with one of the parties or the parties' representative and provided a "matrix" to

guide the participants on that topic. In the second part, Julia and Michael focussed on the measures (and countermeasures) to be taken by the parties in case of doubt regarding the neutrality of one of the arbitrators. Julia and Michael explained that the available measures depend on the stage of the proceedings, i.e., whether the arbitrators are only nominated, the tribunal has been constituted or the award has been rendered and gave an orientation on the options

available to the parties at each stage. The webinar concluded with a lively discussion among the participants on how successful arbitrator challenges are in practice.

Submitted by Julia Klesse, ArbitralWomen member, Counsel, GLNS Rechtsanwälte Steuerberater Partnerschaft mbB, Munich, and Nadine Lederer, ArbitralWomen member, Senior Associate, Hogan Lovells International LLP, Munich

A round-table dialogue on Diversity in International Arbitration – Broadening the Scope, on 10 September 2020, by Webinar



Top to bottom, left to right: Patricia Shaughnessy, Ishaan Madaan, Kirsten Teo, Rose Rameau, Chris Campbell, Harout Samra, Sandra Friedrich, Amanda Lee, Catherine Rogers

Diversity and Inclusion have been increasingly and deservedly capturing the attention of the international arbitration community. The recently released ICCA Report No. 8 of the Cross-Institutional Task Force on Gender Diversity in Arbitral Appointments and Proceedings 2020 ("Report") provides a comprehensive study of diversity issues,

contributing to needed discussion. These discussions were the focus on a tripartite webinar hosted by De Almeida Pereira, Arbitrator Intelligence, and Arbinsol on 10 September 2020. The esteemed panel discussed highlights of the Report and shared important insights on how factors such as age, geographic location, language, race, socio-economic back-

grounds and legal traditions are just as essential to consider in the community drive to promote diversity and inclusion in arbitration.

Moderated by **Kirsten Teo** and **Ishaan Madaan**, the diverse panellists brought fresh and engaging takes on diversity in the appointment of arbitrators and arbitration counsel. ArbitralWomen member **Patricia Shaughnessy** shared key highlights of the Report, noting the current trends, institutional data on gender diversity in arbitral appointments, pipeline issues, such as barriers of entry and unconscious bias, and recommendations to achieve progress. Conversations such as this webinar discussion help to raise awareness that international law demands diversity for international arbitration to be sustainable. Broader diversity is important because it increases the functionality of arbitration by increasing the talent pool. ArbitralWomen member **Catherine Rogers** gave insights on how Arbitrator Intelligence (AI) strives to

increase diversity and promote accountability and transparency in arbitration by (i) collecting data from AI Questionnaire submissions (AIQs) and (ii) analysing and generating data (which is otherwise inaccessible) in the form of reports on qualified and established, but less known, arbitrators from all regions of the world.

Christopher Campbell reminded us that we must consider not just diversity and inclusion, but also representation in practice. He challenged all of us as stakeholders to be intentional in promoting diversity and to lay out actual plans for real change. We should consider the benefit of diversity in thought and perspectives brought to arbitration cases when we have diversity in arbitral appointments and legal representation. He challenged us to consider ‘the 3 Ps’ – People; Projects; Position. We should consider the people helping the cause, projects to increase diversity in a meaningful way, and what we can be doing in our respective positions to further the cause.

ArbitralWomen Board Member **Rose Rameau** aptly distinguished the concepts of diversity and inclusion with an analogy, i.e., that diversity is

about who gets invited to the party and inclusion is about who gets invited to dance. Much has been discussed on diversity in arbitrator appointments and institutions with arbitrator rosters have been mindful to include younger professionals, female arbitrators and arbitrators of diverse ethnic and legal backgrounds. However, while diverse arbitrators do make the rosters or shortlists, we recognise that their appointments remain elusive.

ArbitralWomen Board Member **Amanda Lee** encapsulated the fact that the students of today are the arbitrators and counsel of tomorrow. Hence the challenges they face from the beginning of their legal studies can have a significant impact on who will be arbitrators and counsel in the future and whether these will be truly representative of the community we serve. Indeed, it is the benefit of having different perspectives in a case that is being lost by the structural barriers of entry imposed on those from different socio-economic backgrounds.

Sandra Friedrich highlighted how the University of Miami was intentional in encouraging greater diversity amongst

the Arbitration LLM student population and that diversity in student representation will facilitate broader diversity in the wider arbitration community. **Harout Samra** shared his experiences as an arbitration associate working on Latin American arbitrations and his views on how the younger generation of arbitration counsel and arbitrators could get involved in arbitration associations, activities, projects and find a comparative advantage in practice.

Therefore, next time you are deciding on representation or need to appoint an arbitrator or arbitration counsel, will you be intentional in seeking a diversity of perspectives? Forging a brighter future for all in the arbitration community and the generations ahead starts with us.



Click here to download the ICCA Report No. 8.

Submitted by Aracelly López, Associate, Dentons Muñoz, San José, Costa Rica, and Kirsten Teo, International Arbitration Counsel, De Almeida Pereira Washington D.C., U.S.A, Arbitrator Intelligence Global Lead Ambassador

Arbitral Women-THAC Webinar “The Power of Gender Parity: Opportunities and Challenges in International Arbitration”, on 10 September 2020, by Webinar

ArbitralWomen and the Thailand Arbitration Centre joined forces for the first time to address the crucial issue of gender equality in international arbitration. **Vanina Sucharitkul** and **Elizabeth Chan** helped organise the event. **Louise Woods** introduced the work of ArbitralWomen in her opening remarks.

The discussion took place in a round-table format, with **Manini Brar** posing questions to the speakers as the moderator. Questions covered the causes of gender bias in the world of international arbitration with a particular emphasis on Asia (unconscious



Top to bottom, left to right: Camilla Godman, Vanina Sucharitkul, Tan Swee Im, Noppramart Thammateeradaycho, Louise Woods, May Tai and Manini Brar

bias, societal and cultural factors, internalisation of bias by women, amongst others), the importance and benefit of diversity (legitimacy, accessibility, improving the arbitral process and outcome, amongst others), and possible solutions to tackle the issue going forward (greater visibility and support for female practitioners from all quarters of the arbitration community including parties, institutions, law firms, male colleagues). **Tan Swee Im** and **Noppramart Thammateeradaycho** gave a ground zero perspective on the challenges

faced by female practitioners in litigation and arbitration, in Malaysia and Thailand respectively. Together with **May Tai**, they also addressed the unfortunate 'pipeline leak' in law firms and suggested steps which could address the problem at an organisational level. **Camilla Godman** and Vanina Sucharitkul examined the subject of gender diversity through the institutional lens and agreed that while much had been achieved, institutions must continue to be at the forefront of change. The panel benefited from the personalised accounts of speakers

in response to some questions, which made the discussion both relatable and engaging. The panellists were united in their commitment to the cause of promoting gender diversity in international arbitration in Asia and acknowledged that much remained to be done in furtherance of the goal going forward.

Submitted by Manini Brar, ArbitralWomen member, Legal Consultant, Investment Division, Dept. of Economic Affairs, Government of India, New Delhi, India

The thirty-fourth Investment Treaty Forum, on 10-11 September 2020, by Webinar



Jessica Gladstone

On 10 September 2020, ArbitralWomen member and Clifford Chance partner **Jessica Gladstone** chaired a panel at the [thirty-fourth Investment Treaty Forum \(ITF\)](#) convened by the British Institute of International and Comparative Law, on the subject of states' "right to regulate" as interpreted in recent investor-state and commercial awards. The ITF was founded in 2004 with the goal of providing "a global centre for serious high-level debate in the field of international investment law".

Jessica was joined on the panel by three other noted practitioners in the field of commercial and investment treaty arbitration: **Manish Aggarwal** (Three Crowns, London); **Can Yeginsu** (4 New Square, London); and **Thayananthan Baskaran** (Baskaran,

Kuala Lumpur). Reflecting the "new normal", the event was the first ITF forum to take place entirely virtually, which proved no obstacle to a lively discussion on the issues.

The scope of a state's "right to regulate" without being obliged to compensate investors for any resulting expropriation remains unsettled. As Jessica noted in her introductory remarks, no consensus as to the optimal balance between public and private interests has emerged where the two come into conflict in arbitral proceedings. This is not a new problem, but it is very much a current issue — not least with the ever-increasing public health, economic and environmental pressures confronting states today.

The panellists expanded upon these issues, drawing on their experience as advisors, advocates and arbitrators to suggest what investors and practitioners might take from recent decisions in the area.

Manish Aggarwal presented a high-level overview of the fragmented state of investment treaty jurisprudence on the right to regulate, setting out the two key elements that have been the focus of investment treaty jurisprudence to date:

- i. "fair and equitable treatment", and
- ii. "expropriation".

That fragmented landscape was illustrated by the recent awards in *Marfin v Republic of Cyprus* and *Maygar Farming v Hungary* that were the focus of Thayananthan Baskaran's presentation. While the investments in question in each dispute were of a wholly different nature (respectively, a shareholding in Cyprus's second-largest bank, and leasehold rights to 760 hectares of Hungarian agricultural land), each dispute saw tribunals consider similar questions of discrimination, proportionality and good faith.

Can Yeginsu concluded the discussion by focussing on the decision in *Hydro Energy* as a gateway to speaking about the role of the "margin of appreciation" in this area.

When Jessica opened the floor to questions, the themes were explored further in an engaged debate, including discussion of practical takeaways from the recent cases for parties in investor-state disputes.

The ITF event closely followed the announcement of Jessica's appointment as a Member of the UK Department for International Trade's Advisory Group for Professional Advisory Services.

Submitted by Clifford Chance LLP on behalf of Jessica Gladstone, partner and ArbitralWomen member

Philippe Sands QC in Conversation with Neil, on 10 September 2020, by Webinar



Left to right: Chiann Bao, Philippe Sands and Neil Kaplan

On 10 September 2020, international arbitrators **Neil Kaplan** and ArbitralWomen member **Chiann Bao** were joined in conversation by **Philippe Sands QC**, a prominent arbitrator, member of Matrix Chambers and Professor of Law at UCL. The ‘In conversation with Neil’ series, organised by Delos Dispute Resolution and supported by ArbitralWomen, explores the careers of Neil and Chiann’s guests and discusses pressing issues in the international community. Professor Sands was accordingly invited to share his views on the present state of the arbitration scene. His remarks on diversity in international arbitration were particularly noteworthy.

When discussing the legitimacy of arbitration, Prof. Sands acknowledged the difficulty of moving from the role of counsel to arbitrator faced by new and young practitioners, especially women. He explored the topic of female practitioners in the field further, noting that *“the number of women is woefully underrepresented”*. In his 30-year arbitration career concerning ICSID cases — Prof. Sands shared — he only once, very recently, had a case in which he was a minority on the panel as a male. He was very pleased to have an opportunity to sit with two female arbitrators and was fascinated by the different approach adopted to deliberations and conversation, noting *“It is far more collegial, less ideological, less conflictual”*. As he subsequently explained, his way of thinking has been largely influenced by **Carol Gilligan**, the author of the

book *In a Different Voice*, who posited that women actually think, reason and engage differently than men. Despite the time lapse since the early 1980s when they met, Prof. Sands has continuously shared Gilligan’s views.

As the conversation unfolded, it became clear that the underrepresentation of women in arbitration is merely the tip of the iceberg. According to Prof. Sands, the whiteness of the arbitral community poses an even bigger problem: *“I’ve sat now on dozens and dozens of cases, (yet) I’ve never sat with a black lawyer. (...) That is nothing short of scandalous”*. Prof. Sands subsequently referred to statistics that reaffirm his sense of injustice. During a lecture at UCL that he attended a few years ago, for instance, Judge **Abdulqawi Yusuf** indicated that despite the large involvement of African countries in global investor-state arbitration cases, the number of African arbitrators sitting on such cases has been disproportionately low.

It is hard to disagree with Prof. Sands that such disproportion undermines the legitimacy of the arbitral system.

What can be done about such a state of things, then, and who should initiate necessary changes? Prof. Sands’ answer is straightforward — it is for lawyers of our generation to go the extra mile and make sure that more women and racially diverse people are appointed as arbitrators. As controversial as it is, what it often entails is that one must decline appointments and recommend names of people who satisfy certain gender or ethnic criteria that one does not. After all, especially in cases involving a state, *“the system has got to be broadly representative of its users”*.



Click here to access the webinar recording.

Submitted by Anna Jermak, Communications and Events Manager, Delos Dispute Resolution, London, UK



Investor-state mediation and the Singapore Convention on Mediation, on 12 September 2020, by Webinar

The Singapore International Dispute Resolution Academy (SIDRA) (a research centre at the Singapore Management University School of Law) held a webinar on investor-state mediation and the Singapore Convention on Mediation on 12 September 2020. This webinar was held alongside the events celebrating the ratification of the Singapore Convention on the same day. **Anna Joubin-Bret** (UNCITRAL) delivered the opening remarks, and **Lucy Reed** (Arbitration Chambers), **Frauke Nitschke** (ICSID), and **Zannis Mavrogordato** (Twenty Essex) spoke at the webinar with **Nadja Alexander** and **Darius Chan** from, SIDRA, moderating. The speakers discussed the prospects of using mediation as a dispute resolution mechanism in investor-state disputes, the applicability of the Singapore Convention, mediator standards and mediation rules.

Submitted by Rachel Tan, Xi'en, Research and Development Operations Lead, Singapore International Disputes Resolution Academy, Singapore



Top to bottom, left to right: Zannis Mavrogordato, Nadja Alexander, Frauke Nitschke, Lucy Reed and Darius Chan

ABA Dispute Resolution Tech Expo, on 14-18 September, 2020, by Webinar

Inspired by the greater demand for dispute resolution technologies, ArbitralWomen **Ana Sambold** spearheaded and was the Co-Chair of the first-ever American Bar Association (ABA) Dispute Resolution Tech Expo from 14-18 September 2020. The Expo featured a full week of educational programs, interactive technology demonstrations, and fun socializing opportunities. The event brought together innovators, start-ups, tech companies, ADR providers and individuals from all over the world and provided cutting-edge information and tools to efficiently resolve disputes online.

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



The Big Third-Party Funding Debate 2.0, on 15 September 2020, by Webinar

On 15 September 2020, ArbitralWomen’s President Dana MacGrath, Board Member Rekha Rangachari and members, Professor Catherine Rogers and Dr. Crina Baltag, participated in an online virtual event entitled ‘The Big Third-Party Funding Debate 2.0’ hosted by Christian Campbell of Center for International Legal Studies and organised by Arbinsol as part of their ongoing ‘Post-Pandemic Series’.

This one-of-a-kind debate, comprising an all ArbitralWomen panel, featured an exciting and topical motion: This house believes that International Commercial Arbitration would be safer without Third-Party Funding. Given that the debate was held under the Chatham House rule, the teams advanced some great arguments that made for an intriguing and value-creating discussion, on both academic and practical fronts. The



Top to bottom, left to right: Christian Campbell, Ishaan Madaan, Kabir Duggal, Crina Baltag, Rekha Rangachari, Dana MacGrath, Catherine Rogers

speakers covered major ground while discussing key issues including arbitrator conflicts, sources of funding, the problem of frivolous claims and the regulation of third-party funding.

The speakers, divided in teams of 2, vociferously spoke along the lines of the motion while also talking about the benefits of third-party funding in creating access to justice. The debate also cleared the fog of misconceptions blurring the role played by arbitration finance; but also brought clarity on the problems attached. Speakers addressed the issues concerning uncertainty and safety in an environment that lacks consensus on arbitration finance and with no mandatory universal rules governing that function. One of the highlights of the debate was also a discussion on the proactiveness of ethically sound funders who, leading by exam-

ple, have initiated the International Legal Finance Association to create standards of conduct while also levelling the playing field in international dispute resolution.

This virtual event gathered a huge, diverse and highly interactive audience from 58 countries. The attendees had a chance to get great perspectives and insights from a third-party funder, arbitrators and academicians. Suffice it to highlight that Prof. Rogers co-chaired the 2018 ICCA-QMUL Task Force of Third-Party Funding and contributed immensely to this celebrated debate with her great insight and experience. The debate was well complemented by Dr. Kabir Duggal wearing the moderator’s hat alongside Arbinsol Founder Ishaan Madaan.

The event was supported by New York International Arbitration Center (NYIAC), Omni Bridgeway and TDM/OGEMID and co-organised by ArbitralWomen.



[Click here for the event flyer and recording](#)

Submitted by Ishaan Madaan, Founder, Arbinsol, Miami, FL, US

News you may have missed from the ArbitralWomen News webpage

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

Virtual Arbitration Platform Launched

By Amanda Lee, ArbitralWomen Board Member, Consultant at Seymours, London
6 June, 2020

A group of arbitration practitioners from across the globe have launched 'Virtual Arbitration' [↗](#), a website that provides a forum for the sharing of news and developments relating to the practice of arbitration via web-based communication platforms.

In addition to sharing information about the latest technological develop-

ments and providing practical advice and tips to assist those navigating virtual hearing environments, the Virtual Arbitration website hosts a Directory of information about venues offering virtual hearing services, institutions and technical providers.

The founders of Virtual Arbitration include, among others, ArbitralWomen co-founder Mirèze Philippe and members Juliet Blanch, Lucy Greenwood, Wendy Miles QC, Erin Miller Rankin and Janet Walker.



ICCA Publishes New Diversity and Inclusion Policy and Implementation Plan

By Amanda Lee, ArbitralWomen Board Member, Consultant at Seymours, London
14 June, 2020

ICCA has recently published its first Diversity and Inclusion Policy [↗](#) and a Diversity and Inclusion Implementation Plan [↗](#), together with an updated Non-Discrimination and Harassment Policy [↗](#). These publications were approved by the ICCA Governing

Board at its annual meeting on 11 May 2020.

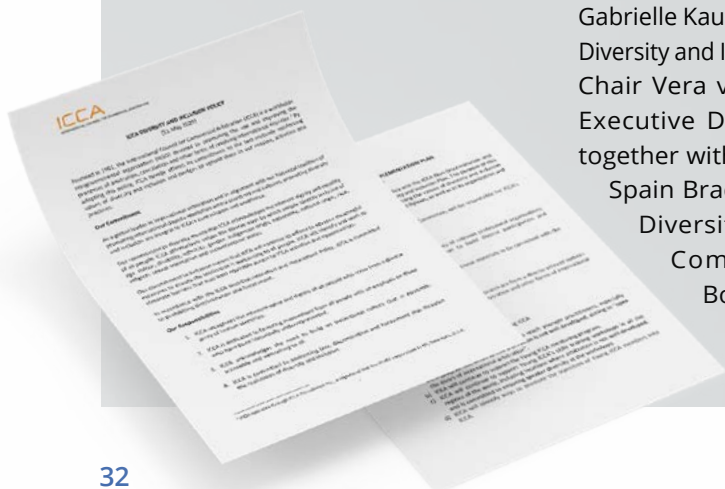
The ICCA Diversity and Inclusion Policy recognizes that “promoting diversity and inclusion are integral to ICCA’s core mission and excellence”, with concrete steps to be taken by ICCA to realise “the values of diversity and inclusion” set out in the ICCA Diversity and Inclusion Plan.

ArbitralWomen members ICCA President Lucy Reed, former President Gabrielle Kaufmann-Kohler and ICCA Diversity and Inclusiveness Committee Chair Vera van Houtte, and ICCA Executive Director Lise Bosman, together with the consultant Anna Spain Bradley, worked with the Diversity and Inclusiveness Committee, Governing Board and ICCA Bureau to develop the new policies and plan.

The ICCA Diversity and Inclusion Policy will be discussed in greater detail at a seminar to take place during the forthcoming ICCA Congress in Edinburgh, of which ArbitralWomen is pleased to act as [Media Supporter](#) [↗](#).

The ICCA Diversity and Inclusion Policy and Implementation Plan will be discussed at a Breakfast Seminar on Thursday 4 February 2021 at the [XXVth ICCA Congress in Edinburgh](#) [↗](#). The Seminar will include interventions by ICCA Inclusiveness Committee Chair Vera van Houtte; consultant Anna Spain Bradley; ArbitralWomen and Inclusiveness Committee member Carolyn Lamm; and Inclusiveness Committee members Prof. Mohamed Abdel Wahab and Lise Bosman.

Further information is available in the release announcement published by ICCA [here](#) [↗](#).



Arbitrator Intelligence Announces Launch of Arbitrator Intelligence Reports!



15 July, 2020

Arbitrator Intelligence, a global information aggregator that collects and analyses critical information about international arbitrator decision making, announced on 15 July 2020 that the first Arbitrator Intelligence Reports (Reports) are now available for sale via its [website](#).

Arbitrator Intelligence, founded by ArbitralWomen member **Catherine Rogers**, has made its first Reports available for purchase by arbitration users. The subjects of the first Reports include a number of female arbitrators, including ArbitralWomen member **Eva Kalnina, Eleonora Coelho, Ana Cecilia Mac Lean, Elisa Ortega Lopez, Mirjana Radovic and Daiga Zivtina**.

Commenting on the launch, Catherine Rogers said *“Beyond getting their first appointments, women arbitrators still face challenges in translating successful appointments into reputations for being effective arbitrators. Our Reports will be a springboard for developing those reputations and, as a result, helping to secure future appointments”*.

Each Report provides arbitration users with data-driven insights into the case management skills and decision making of an individual arbitrator, enabling parties to make better informed decisions about arbitrator selection case strategy. The information contained in each report is collected by Arbitrator Intelligence from parties, internal and external counsel, and third-party funders via its anonymous questionnaire (called the “Arbitrator Intelligence Questionnaire” or “AIQ”).

In 2018 ArbitralWomen and Arbitrator Intelligence co-sponsored the [Campaign on Women Arbitrators](#), encouraging members of the arbitration community to complete an AIQ about female arbitrators. The insights provided in the resulting Reports will help to promote diversity and transparency by making information about lesser known diverse arbitrators widely available, enabling their reputations to develop.

The Reports are available now. Law firms, and corporate and state users of arbitration are entitled to join Arbitrator Intelligence as members and receive significant discounts on the price of Reports in return for providing data to Arbitrator Intelligence via AIQs. Membership is free and more information is available [here](#).

Readers can help Arbitrator Intelligence to continue to provide the market with information about female arbitrators and further the cause of diversity by completing AIQs about them here.



Report of the Cross-Institutional Task Force on Gender Diversity in Arbitral Appointments and Proceedings

28 July, 2020

The Cross-Institutional Task

Force on Gender Diversity in Arbitral Appointments and Proceedings is pleased to announce the release of its Report, the eighth volume of the International Council for Commercial Arbitration (ICCA) Reports Series.

This Cross-Institutional Task Force, assembled in 2019, brings together representatives of 18 leading international arbitration institutions, law firms and gender diversity initiatives to publish and analyze recent statistics on the appointment of female arbitrators, as well as to identify opportunities and best practices to promote gender diversity in international arbitration.

Gender diversity in arbitral tribunals is increasing, with the number of female arbitrators appointed to tribunals doubling in the past four years. This increase is largely the result of the efforts of arbitral institutions to appoint more female arbitrators. However, in 2019 women only comprised just over 21% of arbitrator appointees, underlining the need for improvement in the

field. This Report argues that the greatest opportunity for such improvement lies with parties and the counsel that represent them, noting that while 34% of institutional appointments and 21.5% of co-arbitrator appointments were female in 2019, only 13.9% of party-appointments were female. In addition to the social and moral obligation to address gender discrimination as part of the dispute resolution field's broader commitment to sustainable development, gender diversity in arbitral tribunals can enhance the legitimacy of arbitration, as well as improve its procedures and outcomes.

Importantly, the Report highlights potential barriers to diversity, as well as tools available to arbitration users to improve gender diversity in arbitral tribunals. These tools include: databases of qualified female candidates for counsel to choose from; advice on addressing unconscious bias; ways in which clients and funders can require diversity in international arbitration; opportunities for qualified women to promote and market their credentials; advice for less experienced female lawyers who wish to progress their careers; and advice for employers on how to grow and promote their female talent.

Speaking to the collaboration of the Task Force, ArbitralWomen Member and Chair **Carolyn Lamm** states: "I applaud the outstanding work of the Task Force including the leading arbitral institutions worldwide, the Pledge, ArbitralWomen, Three Crowns, White & Case, Freshfields, ICCA and so many others who collaborated to prepare what is a first comprehensive Report of its kind on the progress of women in international arbitration – and which shares a vision for how we move forward. I am tremendously grateful for everyone's efforts and am confident the Report will make a difference on this issue of importance."

The Cross-Institutional Task Force includes representatives of the following organisations: **ArbitralWomen**; the **American Bar Association**

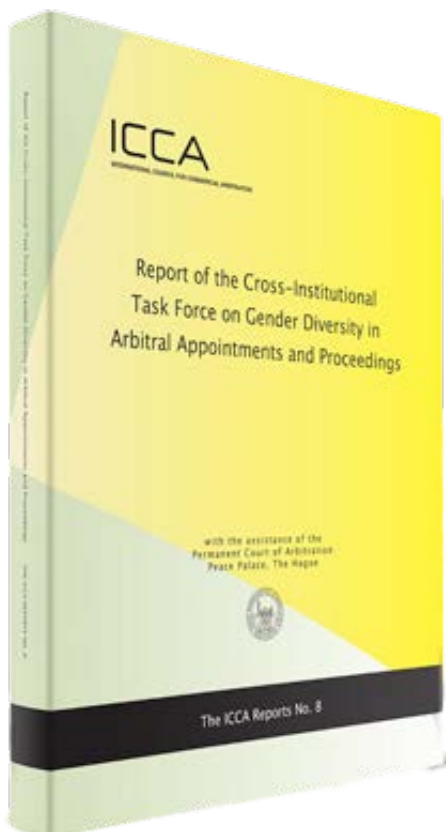
(ABA); **Burford Capital**; the **Equal Representation in Arbitration Pledge** (ERA); **Freshfields Bruckhaus Deringer LLP**; the **German Arbitration Institute** (DIS); the **Hong Kong International Arbitration Centre** (HKIAC); the **International Bar Association** (IBA); the **International Centre for the Settlement of Investment Disputes** (ICSID); the **International Chamber of Commerce International Court of Arbitration** (ICC); the **International Council for Commercial Arbitration** (ICCA); the **International Centre for Dispute Resolution** (ICDR); the **London Court of International Arbitration** (LCIA); the **Stockholm Chamber of Commerce** (SCC); **Three Crowns LLP**; the **University of Sydney**; the **Vienna International Arbitral Centre** (VIAC); and **White & Case LLP**.

Such representatives include ArbitralWomen members **Louise Barrington, Julie Bédard, Alice Fremuth-Wolf, Lucy Greenwood, Ashley Jones, Carolyn Lamm, Noiana Marigo, Wendy Miles QC, Sylvia Noury, Nicola Peart, Mirèze Philippe, Patricia Shaughnessy** and **Ana Stanic**. They also include **Lisa Bingham, Lise Bosman, Valeria Galíndez, Sarah Grimmer, Jacomijn van Haersolte-van Hof, Jennifer Ivers, Anna Kaehlbrandt, Meg Kinnear, Roberta D. Liebenberg, Ramya Ramachanderan, Miroslava Schierholz, Stacie Strong** and **Aviva Will**.

The Task Force extends its thanks to its members listed above, the female arbitrators who agreed to be interviewed by the Task Force to provide their insights and perspectives, as well as independent arbitrator and ArbitralWomen member **Lucy Greenwood** and the **PluriCourts Investment Arbitration Database** (PITAD), who contributed data on arbitral appointments in recent years to this Report.

To access the Report on Kluwer Arbitration, please click [here](#).

To access the Report on the ICCA website, please click [here](#).



Publication of Study of International Commercial Arbitration in the Commonwealth



10 September, 2020

In 2019 the Commonwealth Secretariat undertook a Study of Inter-

national Commercial Arbitration in the Commonwealth (Study). Members of the arbitration community were invited to participate in a survey and to share their attitudes towards international arbitration and the challenges that those in the field face in their home countries, across the Commonwealth and worldwide. The survey was supplemented by interviews and discussions with roundtable groups.

Of particular note, the Study includes recommendations to enhance diversity within the arbitration community, including the importance of Commonwealth

jurisdictions cooperating with their respective arbitral institutions, law societies and bar councils to encourage diversity and require reporting on it. The need to consider diversity when appointing arbitrators, and ArbitralWomen's role in providing the arbitration community with information about diverse candidates, is noted. The Study also proposes that the Commonwealth Secretariat consider launching a Commonwealth diversity pledge.

The expert group overseeing the Study was led by ArbitralWomen member **Professor Petra Butler** and included **Funke Adekoya, Gary Born, Robert Griffiths QC, Audley Sheppard QC**, ArbitralWomen member **Dharshini Prasad** served as Executive Secretary to the Study.

The Study can be found [here](#).

ArbitralWomen is Pleased to Celebrate its Members Appointed to the PCA



Left to right: Rose Rameau, Eva Kalnina, Sitpah Selvaratnam, Ana Stanic

By *Dr Katherine Simpson*,
ArbitralWomen member
15 September, 2020

ArbitralWomen is pleased to share that several of our members have been appointed to the Permanent Court of Arbitration ("PCA"). Most recently, on 14 July 2020, Haiti appointed **Rose Rameau**, an ArbitralWomen Board member. There,

she joins fellow ArbitralWomen members **Eva Kalnina** (appointed by Latvia on 28 March 2017), **Sitpah Selvaratnam** (appointed by Malaysia on 25 May 2019), and **Ana Stanic** (appointed by Slovenia on 6 August 2019). The PCA was established in 1899 and has grown to be an intergovernmental organisation with 122 contracting parties. In addition to their role in dispute resolution,

Members of the PCA are part of the national groups that are entitled to nominate candidates for election to the International Court of Justice, and are also entitled to nominate candidates for the Nobel Peace Prize.

For more information, visit [here](#) and [here](#).

Please join us in celebrating our members.

ArbitralWomen and ADGM Arbitration Centre sign MoU to advance diversity in international dispute resolution

22 September, 2020

ArbitralWomen and the Abu Dhabi Global Market Arbitration Centre (ADGMAC) are pleased to announce that they have agreed to partner with the shared goal of raising awareness and promoting diversity in international dispute resolution. ArbitralWomen and ADGMAC entered into a Memorandum of Understanding (MoU), signed by Linda Fitz-Alan, Registrar and Chief Executive of ADGM Courts, and Dana MacGrath, President of ArbitralWomen.

Through the agreement, ArbitralWomen and the ADGMAC will collaborate on various endeavours to ensure greater representation of females across the global dispute resolution sector, as well as cooperatively advocate for equal opportunity and increased diversity.

Commenting on the partnership, **Dana MacGrath**, President of ArbitralWomen, said: "ArbitralWomen is excited to partner with ADGMAC to promote women and diversity in dispute resolution in Abu Dhabi and the MENA region. It is central to our mission to advance diversity in important regions such as the MENA region where ArbitralWomen has historically had less involvement to date. We are very grateful for the opportunity to collaborate with ADGMAC to support women in international dispute resolution."

Linda Fitz-Alan, Registrar and Chief Executive of ADGM Courts, said: "ADGMAC is delighted to join in partnership with ArbitralWomen. Diversity is a key focus for ADGM, having launched a Gender Equality Initiative in 2019. In arbitration, our first significant step was in the selection of arbitrators to join ADGMAC's Arbitrators Panel, launched in March 2020, which featured diversity and gender equality as key selection criteria. The MoU with ArbitralWomen serves as a vital step in the right direction. We very much look forward to working with ArbitralWomen, their regional representatives and members to continue to innovate, inspire and create tangible progress on diversity in the dispute resolution landscape."

About ArbitralWomen

ArbitralWomen is an international non-governmental organisation that promotes women and diversity in international dispute resolution. For more than 25 years, ArbitralWomen has developed programmes and opportunities to support and promote women in dispute resolution and has served as a leader in the efforts to overcome gender bias in the legal profession.

ArbitralWomen has a mentorship programme and regularly promotes the achievements and activities of its members in its News Alerts, on its webpage and in its periodic Newsletters. Of note is ArbitralWomen's Diversity Toolkit™, a unique training programme designed to help people identify bias and explore ways to overcome it, which was shortlisted for the Equal Representation in Arbitration (ERA) Pledge

Award at the 2020 Global Arbitration Review (GAR) Virtual Awards Ceremony.

About ADGM

Abu Dhabi Global Market (ADGM) is an award-winning international financial centre (IFC) located in the capital of the UAE. ADGM is the first jurisdiction in the region to directly apply English common law and stands out as a leader in the arbitration community with its modern pro-arbitration framework that has been modelled on the UNCITRAL Model Law.

This framework is superbly complemented by the ADGM Arbitration Centre (ADGMAC), which is equipped with state-of-the-art technology and hearing facilities. ADGMAC's hearing rooms and other facilities are available for arbitration cases and mediations, regardless of the institution administering the arbitration or mediation. In addition, the parties can, and are encouraged to, make use of ADGMAC regardless of whether the seat is ADGM. ADGM was awarded "Jurisdiction that has made great progress" by the Global Arbitration Review Awards 2020.

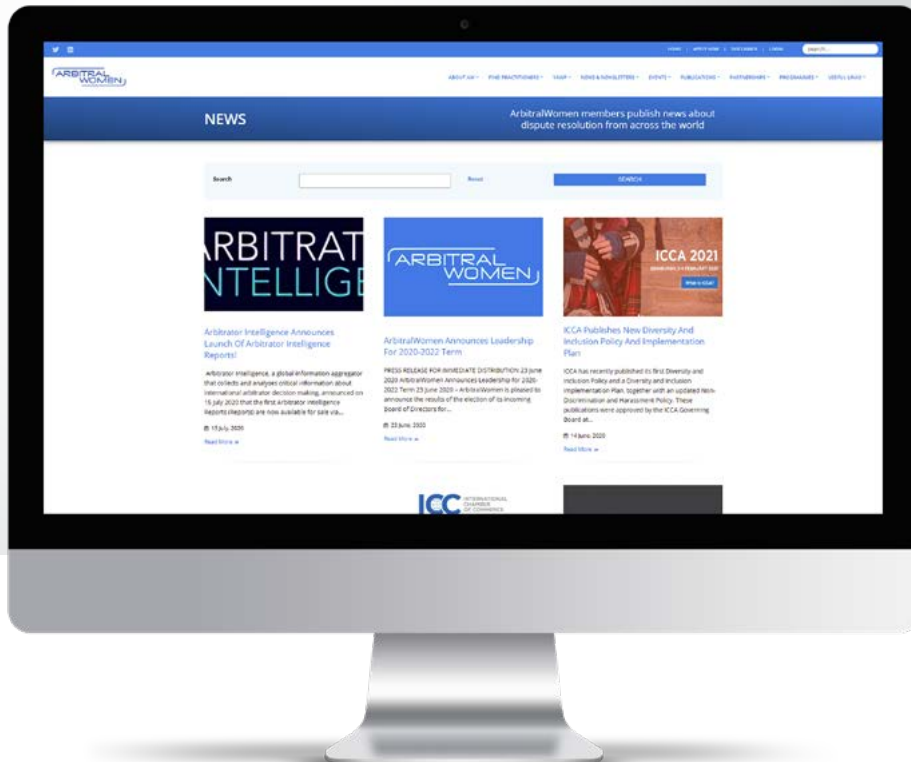
This collaboration agreement between ArbitralWomen and ADGMAC was led and negotiated by ArbitralWomen MENA Regional Director, Sara Koleilat-Aranjo.

ArbitralWomen encourages and supports collaboration with other organisations to promote women and diversity around the world. ArbitralWomen Cooperation Committee Members Rekha Rangachari and Mirèze Philippe will be happy to answer any questions concerning any existing or potential collaboration or partnership agreements with ArbitralWomen. Contact: cooperation@arbitralwomen.org.



Keep up with ArbitralWomen

Visit our website on your computer or mobile and stay up to date with what is going on. Read the latest [News](#) about ArbitralWomen and our [Members](#), check [Upcoming Events](#) and download the current and past issues of our [Newsletter](#).



SPEAKING AT AN EVENT?

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

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

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

ArbitralWomen thanks all contributors for sharing their stories.

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AW Activities at a Glance: [click here](#)

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ArbitralWomen Individual & Corporate Membership

ArbitralWomen's website is the only hub offering a database of female practitioners in any dispute resolution role including arbitrators, mediators, experts, adjudicators, surveyors, facilitators, lawyers, neutrals, ombudswomen and forensic consultants. It is regularly visited by professionals searching for dispute resolution practitioners.



The many benefits of ArbitralWomen membership are namely:

- Searchability under [Member Directory](#) and [Find Practitioners](#)
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- Promotion of your dispute resolution speaking engagements on our [Events page](#)
- Opportunity to showcase your professional news in ArbitralWomen's periodic news alerts and [Newsletter](#)
- Visibility on the [News](#) page if you contribute to any dispute resolution related news and ArbitralWomen news
- Visibility on the [News about AW Members](#) to announce news about members' promotions and professional developments
- Ability to **obtain referrals** of dispute resolution practitioners
- **Networking** with other women practitioners
- Opportunity to participate in ArbitralWomen's various programmes such as our [Mentoring Programme](#)

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

Individual Membership: 150 Euros.

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

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

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

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



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