



Top to bottom, left to right: Affef Ben Mansour, Cherine Foty, Dana MacGrath, Donna Ross, Erika Williams, Gaëlle Filhol, Gisèle Stephens-Chu, Lizzy Chan, Louise Barrington, Maria Beatriz Burghetto, Mirèze Philippe, Rebeca Mosquera, Rekha Rangachari, Rose Rameau and Sara Koleilat-Aranjo

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HAPPY INTERNATIONAL WOMEN'S DAY 2021

In honour of International Women's Day on 8 March 2021, we invite you to **#ChooseToChallenge** gender bias and inequality by organising virtual events within your respective jurisdictions to honour IWD 2021.

We encourage you to "Strike the **#ChooseToChallenge** pose" by raising your hand assertively to demonstrate you choose to challenge gender inequity.

Please send the ArbitralWomen Newsletter team your event reports and photos of your IWD 2021 zoom gatherings at which you "strike the pose" together!

Working Group III (ISDS Reform) 39th session, 5–9

New York Arbitration Week

Delos Dispute Resolution's TagTime Webinars

Women Leaders in Arbitration

Rekha Rangachari

ArbitralWomen Board Member Cherine Foty recently had the opportunity to interview Rekha Rangachari, ArbitralWomen Board Member and Executive Director of the New York International Arbitration Center. The interview covered Rekha's myriad activities which she undertakes under the many different hats she wears.

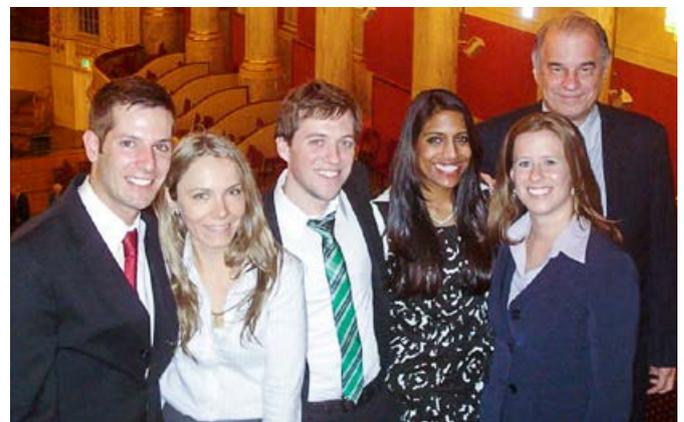
In addition to being the Executive Director of a major arbitral organisation/hearing centre, Rekha is actively involved in the leadership of many distinguished dispute resolution organisations. She is a pioneer for promoting diversity and equal representation for women in the field of alternative dispute resolution in New York, the United States, and internationally.

Before we speak about your career at the New York International Arbitration Center, can you tell our readers how your career in international dispute resolution began?

Like many, it was a path that materialised in real time. As a student at the University of Miami School of Law, I was eager to involve myself in the international offerings of a port of call city to Latin America, and fortuitous as my tenure overlapped with the founding of its [International Arbitration Institute](#). I had the privilege to be ensconced in my international arbitration coursework while learning from global thought leaders, in parallel with donning the badge of a Vis Mootie for two years (first substance, then jurisdiction). I was enthralled. After internships in Rotterdam and Brussels with key practitioners sharpening my skills, I began my institutional trajectory at the ICDR, then to the AAA, and most recently to NYIAC.

You worked for several years at the International Centre for Dispute Resolution and thereafter at the American Arbitration Association before becoming the Executive Director of the New York Arbitration Center. Can you tell our readers about your experience in domestic and international arbitral institutions/organisations and how you came into the role of Executive Director of NYIAC?

Where you work defines your vantage point. For me, this was a deep dive into the ways and means in which arbitral institutions operate, advance, and evolve. When I started at the ICDR, what struck me immediately was the breadth and diversity of my colleagues, not only multilingual and carrying several degrees across jurisdictions (what I would later learn is not uncommon) but also anchored in different stages of their careers. Together, we dove into issues surrounding access to emergency and interim relief in arbitration, before procedural rules revisions successively percolated through arbitral institutions. We spent time poring over arbitrator qualifications to create arbitrator lists, mindful of the parties'



Left to right: Diogo Pereira, Anna Tumpovskiy, Kevin Huber, Rekha Rangachari, Professor John Rooney, Nyana Abreu Miller pictured at the Vis Moot 2019 in Vienna

jurisdictional, linguistic, and subject-matter expertise requests. Consolidation and joinder were also top considerations, with parallel filings reflecting similar global parties engaged across proceedings. Shifting to a domestic lens at the AAA, I focused on the growth of the New York commercial caseload. I sought to understand the age-old divide between litigation and arbitration, but also why stakeholders selected one as opposed to the other based on business model, risk appetite, and any unpleasant experience(s).

What does a typical day as Executive Director of the New York Arbitration Center look like?

I'm pleased to say there's no typical day in most of our careers, including in the work of a small business leader. On any day, I don several hats, e.g., NYIAC press officer, strategic advisor, historian, venue manager, head of global events, web developer, custodian of documents, and the list goes on. When colleagues ask to be redirected to another department, I reply with equal humour and zeal (after a pause, of course), "It's me, Rekha. How can I help?" My work streams involve deliberate practice — outlining policies and discussions ripe for Executive Committee and Board engagement, responding to member and public queries on substance and administration,



Top to bottom, left to right: Carlos Martinez Betanzos, Shalini Soopramanien, Salman Farooq, Cheng Zhang, Neda Shahghasemi, Carolina Cardenas Venino, Charlene Warner, Rekha Rangachari, Miroslava Schierholz pictured at the AAA-ICDR Headquarters in 2012 in New York

exploring global collaborations through activities, events, and trainings, and speaking and writing on topics surrounding new developments, best practices, and New York as a central hub (i.e., choice of law, seat, and venue). In sum, many in the community have told me that I have become synonymous with NYIAC, NYIAC is me — a merged identity that defines each day.

In 2019, you were on the organising committee of the inaugural New York Arbitration Week. How did the idea for New York Arbitration Week come about and what were the important components of the programming for week? Please also talk about the challenges of organising the second New York Arbitration Week as a virtual event.

Global arbitration days and weeks have become a trend and thankfully so – a genuine opportunity to come together as a community to debate hot topics, review and evaluate updated rules, procedures, and jurisprudence, and network. New York benefits from being at the heart of international practice, with headquarters and offices of the leading law firms, arbitral institutions, and organisations. It has been my great pleasure for NYIAC to be at the epicentre, together with the Chartered Institute of Arbitrators (CIArb) New York Branch. The goal is to marry substantive sessions with organic networking, be it in person, remote, or hybrid.

In 2019, we held our [first dedicated week](#), with the press and panache that goes alongside it. Critical topics included key developments regarding diversity, inclusion, unconscious bias, and intersectionality (for which [Young ArbitralWomen Practitioners](#) held a lead role), the launches of the [Restatement of the Law \(Third\) of International Commercial and Investor-State Arbitration](#) and the [ICCA-City Bar-CPR Protocol on Cybersecurity in International Arbitration](#), with transparency, contract interpretation, and economic issues in international arbitration covered at the Fordham Conference.

Broadcasting remotely for [New York Arbitration Week 2020](#), we embraced our global community in technicolour online and it was phenomenal — with more than 1,000 unique attendees over 18 sessions, hailing from 100 countries! We zeroed in on variety, from substantive dialogue on non-signatories and mixed-mode dispute resolution to a mock U.S. Supreme Court argument on whether discovery applies under a U.S. federal statute to private international commercial arbitrations. In parallel, we opened the door to candid conversations and urgent concerns during the ArbitralWomen and Young International Arbitration Practitioners of New York [keynotes](#) and networking sessions on breaking into the proverbial arbitration club, pivoting to do what you need to for your personal and professional growth, and getting through the current financial crisis and pandemic (with sanity intact). Planning events on a global scale is never easy but can be truly gratifying when you have the opportunity to work with a blue-ribbon team — from



Left to right: Rekha Rangachari at NYIAC; Rekha Rangachari and Dana MacGrath at the Yale Club of New York City, both pictured at New York Arbitration Week 2019 in New York

Co-Chairs Stephanie Cohen and Jeffrey Rosenthal, to our Organising Committee, to FTI Consulting who managed our online platform. But the unsung heroes of any event are the delegates who carve out time and, in this instance, click 'Join Meeting'.

You joined the Board of Directors of ArbitralWomen in June 2020. What motivated you to run for election as a board member and what has been your role on the board? How were your first six months as ArbitralWomen board director, especially in the time of COVID-19?

I come from a strong line of leading women. My maternal grandmother was a born entrepreneur, opening a successful cooking school and eatery in South India at a time when it was uncommon for women to work outside the home. My mother left the comforts of life in that city after medical school, traveling 13,000 kilometres to the US with my father to begin life anew, with few contacts and limited funds. My sister and I were raised with the mentality that the world is our oyster – to dream big, to capitalise on the privileges we were afforded, and to be both fierce and kind as we paved our route forward. These are reasons why I joined ArbitralWomen as a member.

Fast forward to 2018, when I had the great honour to co-chair the [25th Anniversary Diversity Dividend Jubilee Conference](#) with President Dana MacGrath, complete with an all-access pass to meet ArbitralWomen's leadership. At that Conference, we launched the bespoke [Diversity Toolkit Training](#), which has become an engagement point that I continue to hold dear as I speak with stakeholders. What that Conference reaffirmed in my mind's eye is the power of ArbitralWomen and its crucial platform – trailblazing conversations on diversity, gender equality and parity, bias, and intersectionality, all while advancing the interests of female practitioners and promoting women and diversity in international arbitration. There are many ways to shift the paradigm and ArbitralWomen got the recipe spot on through methodical processes, community support, and necessary allies. It is truly reaffirming to be picked by one's global peers. I owe a debt of gratitude to my colleagues and friends for giving me the chance to contribute.

Shifting in real time to remote working was not without its aches and pains. But we did it then and continue to thrive now. Supporting an organisation like ArbitralWomen through the pandemic has reinforced the need — to be mindful of the

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Top to bottom, left to right: Rekha Rangachari, Vatsala Gopalan, Bhanu Rangachari, Deepa Rangachari, Asha Hallowell, at the Rangachari residence in the US in 2014, capturing 4 generations of women

varying pressures on women across distinct jurisdictions and to turn the volume up on these perspectives, personalities, and cultural mores that syncopate a given region. Through curated break-out sessions and events, we create moments ripe for cultural awakening and connectivity and thereby build respect, appreciation, and cognition — foundational elements of a bridge that endures.

You previously served on the Diversity Committee of the American Arbitration Association spearheading initiatives for greater cross-cultural representation and collaboration, you organised a highly successful Diversity Challenge event and Colloquy on Diversity and Perseverance at the first and second New York Arbitration Weeks, you are involved in the Diversity Toolkit Committee of ArbitralWomen, and you most recently launched a new organisation R.E.A.L. – Racial Equality for Arbitration Lawyers of which you are Co-Chair. Please share your thoughts on the importance of diversity in the field of international arbitration and your thoughts on intersectionality.

Diversity and inclusion are a dynamic pair that now have ready recall in most circles. What does it mean in practice? Put another way, how do we, as ArbitralWomen Founder **Mirèze Philippe** reminds us, [Walk the Talk](#)? We begin with our individual access points. As Director at the AAA-ICDR in



Left to right: Rekha Rangachari and Deepa Rangachari

New York, one of my work streams was strategising how to expand the pool of diverse mediators and arbitrators – to ensure the New York commercial rosters [reflected](#) the sum of talented practitioners. I met with leaders of affinity bar associations and organisations, to better understand the leaky pipeline and identify practitioners at two stages of their careers: to begin a trajectory into dispute resolution through the [Higginbotham Fellows Program](#) or to [apply](#) to the AAA-ICDR as a neutral.

As Executive Director at NYIAC, I co-lead an international organisation. In my "empire state of mind" amidst the bright "lights that will inspire you", diversity plays an important role because one of my work streams is member and public engagement. I spend considerable time meeting with diverse delegates and students, e.g., recently relocated for a master's programme, visiting for Working Group Sessions at the United Nations Headquarters in New York (where NYIAC has observer status), or passing by on business trips. I like to believe NYIAC is the central entrepôt for any stakeholder in international arbitration in New York, and through these one-off coffee connections, I build momentum for change. Both at the AAA-ICDR and NYIAC, it has been a luxury to work with exceptional leaders in our field who gave me the freedom to dance, and in turn, embrace others to hear my music.

Moreover, recent events in the US have caused me to reflect on our practice and recognise the lack of intersectional diversity in what should be a truly international practice. This is the genesis of a new arbitral organisation and non-profit incorporated in New York, titled [Racial Equality for Arbitration Lawyers \(REAL\)](#), where I serve as co-chair (buttressed by a phenomenal cohort of leaders within our Steering Committee, Ambassadors, Partner Organisations (which include ArbitralWomen), Members and Allies). REAL seeks to promote racial justice through inclusion, anchored in twin goals of "access" for everyone and "advocacy" for those who may not have a voice. Please consider joining REAL and broadening our dialogue and action. (There is no sign-up fee.)

You are also involved in a number of other organisations on the city, state, national, and international level. The list of the organisations in which you hold board, chair, or other leadership positions

is extensive and includes committees of the New York State Bar Association (NYSBA), the American Society of International Law (ASIL), the American Bar Association (ABA), amongst many others. Please tell us about your choice to be involved in so many organisations and why you focus your efforts not only on the local level, but also the national and international level.

Several years prior, I was a [classical Indian dancer](#) by training. I learned readily then how much I enjoyed chassing between principal roles and the company core, and I bring that same spirit to the committees and organisations I lead. The hope as in my dancing days is to create strong, clean lines from one organisation to the next, as we collectively build a better process — reflective of developments in one that can be shared in the next. Far too often, with the best of intentions to define a space, we wave our organisational flag with fervour. We strive to be the organiser and not the supporting entity. Just maybe, we gain similarly from either role, bringing a larger share of players to the table. We can then focus on fewer but better substantive programmes that achieve clearly defined goals and capitalise on important perspectives to spur dialogue, scholarship, and action. I strive to do this across committees and organisations, and readily welcome your collaboration. Feel free to drop me an email.

As you are well aware, the underrepresentation of women and minorities in arbitration remains a dire problem. Given your role as the executive director of an arbitral organisation/hearing centre, what is your advice to women and other underrepresented minorities to improve their exposure and gain the confidence of counsel, parties, and institutions to be appointed as an arbitrator?

I'll borrow here from Winston Churchill: 'Success is not final, failure is not fatal: it is the courage to continue that counts'. Trust your gut and do not be afraid to take sharp turns in your career. Although you cannot always be sure of the myriad on-and-off ramp access points, there are good skills, experiences, and people to discover at every juncture.

As you expand your practice:

- a. Recognise that there are systemic issues with gender, race, and other forms of representation;
- b. Seek mentors and advisors who will act as sponsors and champions for you;
- c. Join institutions like ArbitralWomen and REAL that strive to be part of the solution; and
- d. Give opportunities to others whenever you have a chance.

I'll close with Ruth Bader Ginsburg: 'Fight for the things that you care about. But do it in a way that will lead others to join you'. Dear friends, build with courage, conviction, and kindness.

Women's Initiatives In Their Workplace

European Commission takes steps to improve the gender balance in trade and investment arbitration



Left to right: European Commissioners Věra Jourová and Helena Dalli presenting the European Commission's Gender Equality Strategy

On 18 December 2020, the European Commission adhered to the [Equal Representation in Arbitration Pledge](#) with respect to external trade and investment dispute settlement. In parallel, the Commission announced concrete steps to improve gender balance in arbitrator appointments. **Maria Luisa Andrisani**, Legal Officer at the European Commission's Directorate General for Trade, explained these developments and their context to ArbitralWomen Board Member **Gisèle Stephens-Chu**.

Gender diversity initiatives within the European Union have received a fresh boost through the [Gender Equality Strategy 2020-2025](#) unveiled by Ursula von der Leyen's Commission in March 2020, shortly after taking office. The promotion of gender equality is enshrined in Article 8 of the Treaty on the Functioning of the European Union ("In all its activities,

the Union shall aim to eliminate inequalities, and to promote equality, between men and women"), and striving for a "Union of Equality" is one of the key priorities that President von der Leyen set out for this Commission in her [political guidelines](#) before taking office. The Gender Equality Strategy outlines key actions across all policy areas both at the level of EU insti-



Maria Luisa Andrisani

tutions and EU Member States designed, among other things, to challenge gender stereotypes, close gaps in employment and pay, and, significantly for present purposes, achieve gender balance in leadership and decision-making.

Consistent with this strategy, and in response to demands from civil society and other stakeholders, the Commission has decided to take action to improve the diversity of EU appointments to trade and investment dispute settlement panels. Until now, the Commission has relied on a pool of adjudicators that had been established based on input from Member States many years ago, and was not sufficiently gender balanced. It was from this pool that the EU drew to establish the list of adjudicators for inter-State trade disputes under the CETA agreement, which has been criticized for its lack of diversity (see, in particular, the interview of Dr Katherine Simpson in



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39). The Commission recognizes the validity of such criticism. By adhering to the Pledge for trade and investment matters, the Commission commits to taking concrete steps to alter the *status quo*, and seeks to renew and refresh the pool of candidates for future appointments. Commenting on these actions, Executive Vice President and Commissioner for Trade Valdis Dombrovskis [noted](#) : *"We are seeking outstanding and highly-qualified candidates to settle trade disputes. As part of today's call, we have also pledged to improve gender balance in the arbitration community. This Pledge is part of the European Commission's long-standing commitment to gender balance in all areas of work and life — one of our most firmly held values. ... Securing excellent arbitrators for disputes is part of our overall process of upgrading our trade enforcement tools and mechanisms."*

A [call](#) for applications from candidates with trade and trade and sustainable development dispute settlement expertise was issued on 18 December 2020 and ran until 1 February 2021 (the deadline has been extended to 15 February 2021 exclusively for candidates wishing to be considered for appointment in rosters for state-to-state dispute settlement and/or panels of experts under the EU-UK Trade and Cooperation Agreement who have not yet applied). The aim of this call is to create two pools of candidates from

which the Commission will make appointments, one for state-to-state dispute settlement on trade law matters, the other for trade and sustainable development issues. Candidates will have to demonstrate knowledge and experience in trade law or trade and sustainable development matters, and in international dispute settlement.

A separate call will be issued in the future to establish a pool of candidates for the Investment Court System (ICS), once the first of the EU's agreement with ICS, CETA, comes fully into force following ratification by all EU Member States (CETA's current provisional application excludes investment protection and investor-state dispute settlement provisions).

To ensure the objectivity and transparency of the selection process for all pools of candidates, applications will be reviewed by an independent selection panel of four experienced former or current judges or arbitrators and/or academics of high standing, to be respectively nominated by the European Commission, the Council of the European Union, Member States and the European Parliament, which shall be gender balanced (the Commission has recently issued another [call](#) for candidates to act as its nominee to the selection panel). The selection panel will screen candidates to ensure that they have the required expertise, case management skills and meet other criteria such as independence and high ethical standards, and will seek to ensure fair geographical representation and gender balance.

Once the pools are established, the Commission will propose individuals to be appointed either to specific cases as disputes arise or to rosters, courts and tribunals under the EU's trade and investment agreements with third countries. In proposing candidates, the Commission will strive to ensure gender balance. For individuals proposed to pre-established rosters or tribunals, the final decision on the appointments will be taken in agreement with the third country party to the agreement (through

the joint committee mechanism) and after the approval of the Council of the European Union.

Moreover, in its [proposals](#) to UNCITRAL Working Group III for a multilateral investment court, the European Union has advocated the use of mechanisms to ensure gender and geographical diversity, such as the minimum requirement for the International Criminal Court of at least six female and six male judges. In its submissions, the EU notes that the current system of party appointments in investor-state dispute settlement leads to a lack of diversity because of the tendency of parties to default to arbitrators with a known, predictable profile, that is very often "pale, male and stale", as recent studies show (eg, Taylor St. John, Daniel Behn, Malcolm Langford, and Runar Lie, *Glass Ceilings and Arbitral Dealings: Gender and Investment Arbitration*, Pluricourts Working Paper, January 2018) available [at here](#) .

It is now hoped that many of the qualified women in the fields of international trade, sustainable development, investment and dispute settlement have responded and will respond to the Commission's current and future recruitment drives.



Letter from Vice-President and Commissioner for Trade Valdis Dombrovskis announcing the European Commission's adherence to the ERA Pledge

Submitted by Gisèle Stephens-Chu, ArbitralWomen Board Member and Founder, Stephens Chu, Paris, France

Working Group III (ISDS Reform) 39th session, 5–9 October 2020, in Vienna and Online

The United Nations Commission on International Trade Law (UNCITRAL) held its Working Group III (ISDS Reform)'s 39th session in Vienna and online from 5 to 9 October 2020. The Secretariat opened the session and indicated that there is a need to preserve transparency, efficiency, equity and flexibility of the working groups. Customarily, during each session, the members of the particular Working Group elect the Chair on the first day of the session. For this Working Group, the members have elected **Shane Spelliscy** (Canada) and **Natalie Yu-Lin Morris-Sharma** (Singapore) as Rapporteur.

Due to the Covid-19 pandemic, UNCITRAL Working Groups have been operating on a hybrid level, where some delegates would attend in person, in Vienna, while others appear online through the 'interprefy' platform. Currently, UNCITRAL has 60 Member States, among which 54 were present with the exception of Côte d'Ivoire,



Rose Rameau

Lebanon, Lesotho, Libya, Pakistan and Uganda. Also present were 30 Observer States, one non-member entity, 10 intergovernmental organisations and 53 non-governmental organisations. Among the delegates present in Vienna were Iran, Bolivia and Burkina Faso, while all other members and observers appeared online including

Arbitral Women delegate, **Rose Rameau**.

During the meeting, the Chair outlined that the 39th session consisted of phase 3 of the Working Group and the 3rd week of substantive deliberation. Based on a decision at its 38th session ([A/CN.9/1004](#), paras. 25 and 104), the Working Group were to consider the following reform options: (i) Dispute prevention and mitigation as well as other means of alternative dispute resolution; (ii) Advisory Centre; (iii) Treaty interpretation by State parties; (iv) Consideration for alternative dispute resolution methods; (v) Multiple proceedings, shareholder claims and reflective loss; (vi) Security for costs and means to address frivolous claims; and (vii) Multilateral instrument on ISDS reform. During that same session, the members decided that the Working Group III would not be making any decision on whether to adopt a particular reform option at the current stage of the deliberations.

i. Dispute prevention and mitigation as well as other means of alternative dispute resolution

The Working Group emphasised that the focus of reforms in dispute prevention and mitigation would be on the pre-dispute phase, rather than after a dispute has been brought to arbitration. The idea was that dispute prevention and mitigation measures can create a stable and predictable environment for investment and can promote, attract and retain investments. States, when negotiating investment treaties, should consider providing for dispute prevention and mitigation, as well as pre-arbitration consultation procedures. Since the views on a mandatory pre-arbitration phase varied amongst the Member States, it was suggested that States would greatly benefit from sharing knowledge and practices on dispute prevention. In doing so, the States would build technical assistance and capacity by sharing good practices and know-how on dispute prevention provisions. References were made to [the Dispute Prevention of Investment Arbitration and Mitigation](#) and the [Model Instrument on Investment Dispute Management](#) developed by the Energy Charter Conference. In addition, at least one State suggested that Member States should undertake the development of a multilateral declaration by States on dispute prevention.

ii. Advisory Centre

During the session, some States indicated that they should have an Advisory Centre devoted to dispute prevention and capacity building. The Working Group noted that the question of dispute prevention and mitigation was closely connected to the reform option of establishing an Advisory Centre which could possibly be tasked with dispute prevention and capacity-building activities.

iii. Treaty interpretation

The Member States perceived that the ISDS reforms should also contain guidance on treaty interpretation. The Working Group, in evaluating this topic, determined that treaty interpretation was closely related to the question of dispute prevention and mitigation, because disputes might be prevented where investment treaties are consistently interpreted and managed. Therefore, the Working Group requested that the Secretariat assemble various tools contained in investment treaties, build on available resources, and provide information on how they addressed the questions and concerns that have been raised in the deliberations, including how these tools have been interpreted by arbitral tribunals. In addition

to such compilation, the Working Group requested that the Secretariat formulate another restatement of document [A/CN.9/WG.III/WP.191](#), in order to provide more information regarding the reasons why the existing tools on treaty interpretation were not used by States or were not accepted by arbitral tribunals.

iv. Consideration for alternative dispute resolution methods

The Working Group considered mediation, conciliation and other forms of alternative dispute resolution (ADR) methods. There was a consensus that mediation, conciliation and other forms of ADR are less time – and cost-intensive than arbitration and they are more flexible and allow the parties to maintain their autonomy, by allowing them to preserve and improve long-term relationships which can protect foreign investment and avoid further conflicts. As such, the Working Group considered how ADR methods could be promoted and how they can be used more widely. The Working Group highlighted that the United Nations Convention on International Settlement Agreements Resulting from Mediation (“Singapore Convention on Mediation”) is a useful instrument also in the context of ISDS.

v. Multiple proceedings, shareholder claims and reflective loss

The issue of multiple proceedings was considered, along with those relating to shareholder claims and reflective loss. The Working Group stated that multiple proceedings had been identified as a concern, due to their negative impact on the cost and duration of ISDS. The Working Group noted that multiple proceedings yield potential inconsistent outcomes, possible double recovery, forum shopping, as well as abuse of process by claimant investors. The Working Group concluded that there was a need to reform the current ISDS system as related to multiple proceedings when considering the old-generation investment treaties which did not provide appropriate means to address them. However, the Working Group also considered that any reform should be well-balanced, by (a) addressing the concerns of multiple proceedings; (b) ensuring the continued promotion of foreign investment, as well as the protection of foreign investors and (c) guaranteeing due process and procedural fairness when implementing different tools.

vi. Security for costs and frivolous claims

Host States have been at risk when investors bring illegitimate claims. One way to remedy the States’ concerns is to request security for costs from the arbitral tribunal. Statistically, most tribunals deny States’ request for security for costs. Given such concerns, the Working

Group reaffirmed the need to develop a more predictable and clearer framework for security for costs in ISDS reform. The Working Group also noted how difficult it could be for successful respondent States to recover costs of ISDS from claimant investors. It was further highlighted that security for costs could protect States against a claimant’s inability or unwillingness to pay, as well as contribute to discouraging frivolous claims. There too, the Working Group advocated for a balanced approach, in order to avoid limiting access to justice for certain investors, particularly small and medium-sized enterprises.

With regard to frivolous claims, there was general consensus for developing a framework to address such claims, by making it possible to dismiss them at an early stage of the proceedings and provide guidelines to tribunal on the process. It was noted that such a framework could address, among others, the cost and duration of the dispute, as well as the regulatory cooling off period. The Working Group suggested that the list of claims would include those that were manifestly lacking legal merit, unsubstantiated or unmeritorious claims, unfounded claims as a matter of law, and claims resulting from treaty shopping (including through corporate restructuring). It was mentioned that the framework should provide clear language to guide ISDS tribunals in identifying frivolous claims.

Accordingly, the Working Group III tasked the Secretariat with liaising with other organisations or institutions to collect information about provisions in existing investment agreements and arbitration rules, such as Article 41(5) of the ICSID Arbitration Rules (tribunal’s power to decide preliminary objection that a claim is manifestly without legal merit), as well as relevant jurisprudence to determine how to approach and address frivolous claims at an early stage of the proceedings. The Working Group further requested that the Secretariat prepare a model clause, which would create a clear framework for the early dismissal of frivolous claims.

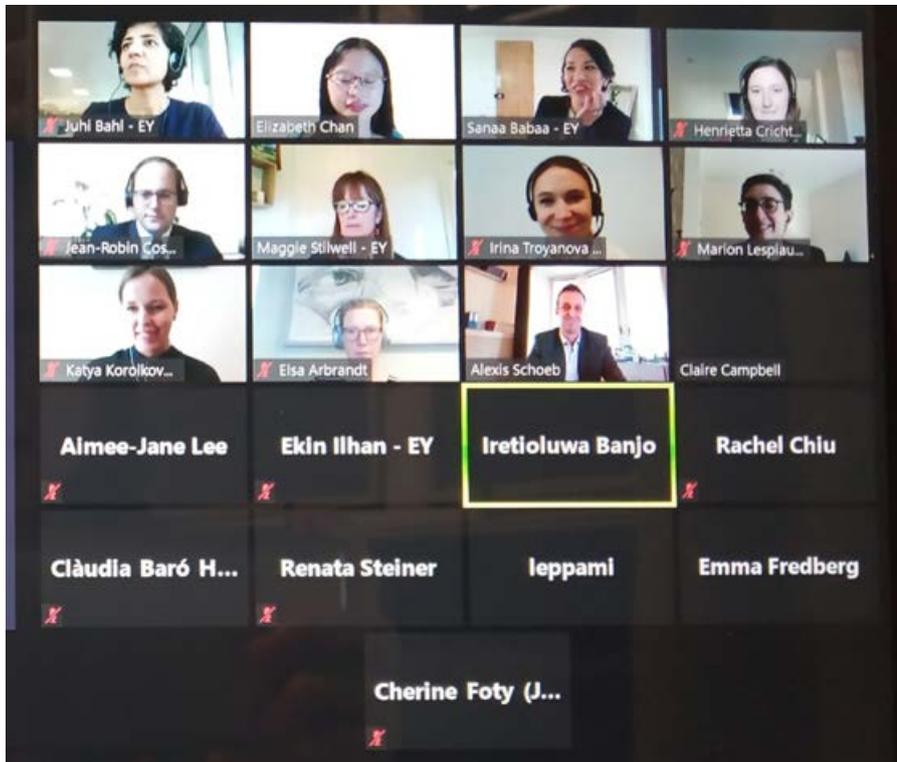
vii. Multilateral instrument on ISDS reform.

The need to develop and adopt a Multilateral instrument on ISDS reform ([A/CN.9/WG.III/WP.194](#)) was also one of the topics at this session. Such an instrument would aim to provide a framework for implementing multiple reform options where the States can opt in or out of the options. The need for a comprehensible and flexible approach to the different reform options, allowing Member States to choose whether to adopt relevant reform options, was highlighted. However, it was noted that a flexible instrument with optional elements, as contemplated, might contribute to more fragmentation of the ISDS system and to forum shopping.

Submitted by Rose Rameau, ArbitralWomen Board Member, Partner, RAMEAU INTERNATIONAL LAW, Washington D.C., US

Reports on Events

When Experts Disagree – Business Valuations, on 4 November 2020, by Webinar



Top to bottom, left to right: Juhi Bahl, Elizabeth Chan, Sanaa Babaa, Henrietta Crichton, Jean-Robin Costargent, Maggie Stilwell, Irina Troyonova, Marion Lespiau, Ekaterina (Katya) Korolkova and participants

On 4 November 2020, EY’s Claims & Disputes team launched a virtual workshop series titled, ‘Demystifying quantum and expert evidence’, in collaboration with the Equal Representation in Arbitration Pledge Young Practitioners Subcommittee (YPSC) and ArbitralWomen and supported by the Rising Arbitrators Initiative.

The goal of the three-session series is to ‘provide aspiring arbitrators with the skills to enable them to obtain their first arbitral appointments and to succeed in them’, as **Elizabeth Chan** of Three Crowns, who is also an ArbitralWomen Board Member and a YPSC Member, explained. Sponsored by **Maggie Stilwell** and **Sanaa Babaa** of EY, the series helps arbitrators to understand the key aspects of quantum and expert evidence, the drivers of differences between experts, and options available to narrow down and resolve those differences.

The first session, “**When experts disagree – Business valuations**”, focused on the reasons why experts, working on opposite sides of a dispute, may form different opinions. EY team members from London and Paris led participants from five continents in a discussion of the common practical reasons underlying those differences and how to evaluate

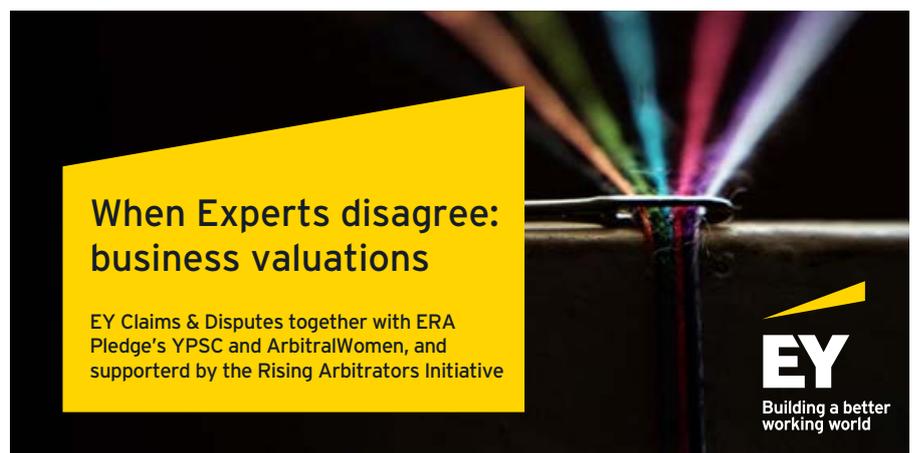
expert evidence. The discussion included a refresh of the commonly accepted approaches to and technical bases for business valuations, as well as a case study of a mining company valuation, which was used to consider the strength of competing expert evidence and judgments underpinning valuations under the income and market approaches.

The concluding Q&A round was highly interactive and provided the participants with the opportunity to discuss the practical challenges they faced when dealing with divergent expert opinions. Feedback from participants highlighted the interactive workshop format of the session, which was also described as informative, engaging and practical.

The remaining sessions in the series focus on the procedural tools available to arbitrators when working with experts and complexities in measuring damages in light of COVID-19 and related disruptions.

The EY presenters and workshop leads were: **Maggie Stilwell, Sanaa Babaa, Henrietta Crichton, Ekaterina (Katya) Korolkova, Marion Lespiau, Jean-Robin Costargent, Irina Troyonova and Juhi Bahl.**

Submitted by **Sanaa Babaa**, ArbitralWomen member, Director, Ernst & Young, London, UK



The Enforcement of Intra-EU Awards: Will the US Come to the Rescue?, on 10 November 2020, by Webinar

The Spanish Arbitration Club 40 (CEA-40), Freshfields Bruckhaus Deringer and the New York City Bar co-organised a webinar on current issues with respect to enforcement of intra-EU awards and recent developments in the US courts.

Lucia Montes (Cuatrecasas) delivered welcome remarks on behalf of CEA-40. Panellists included ArbitralWomen President **Dana MacGrath** (Omni Bridgeway) and ArbitralWomen member **Naomi Briercliffe** (Allen & Overy), together with **David Livshitz** (Freshfields), **Brian Dunning** (Dunning Rievmann & Davies and President of the Spain-US Chamber of Commerce) and **Alberto Fortún** (Cuatrecasas). **Alexandre Alonso** (Freshfields Bruckhaus Deringer) moderated the programme.



Panellists discussed the recent case law developments in Europe with respect to enforcement and

non-enforcement of intra-EU awards in 2020, since the *Achmea* decision, and contrasted it to the enforcement approach of US courts. The dialogue also touched on third party funding with respect to arbitral proceedings that may be subject to non-enforcement in certain parts of the world, due to the *Achmea* issue. Panellists also discussed recent termination by some European countries of intra-EU BITs. It was agreed amongst the panellists that this area was still evolving. Hopefully there will be more clarity in 2021.

Submitted by Dana MacGrath, ArbitralWomen President and Omni Bridgeway Investment Manager & Legal Counsel, New York City, US

How to Progress Diversity in Extraordinary Times, on 12 November 2020, Virtual ICC Miami Conference 2020



Top to bottom, left to right: Chiann Bao, Carsten Wendler, Ndanga Kamau, Gabriel Costa, Soledad Díaz

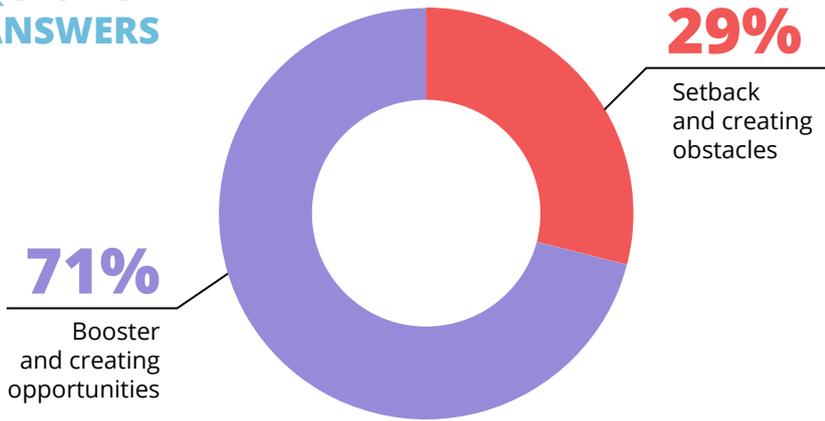
On 12 November 2020, ICC, ArbitralWomen, the ERA Pledge and WWA LatAm joined forces to organise a diversity session on 'How to Progress Diversity in Extraordinary Times' held on the occasion of the Virtual ICC Miami

Conference 2020.

Panellists included **Chiann Bao** (Arbitration Chambers), **Soledad Díaz Martínez** (Ferrere), **Ndanga Kamau** (Ndanga Kamau Law) and **Gabriel Costa** (Shell, Rio de Janeiro). **Carsten Wendler**

(Freshfields) moderated the panel. The discussion focussed on the importance of increasing gender diversity in arbitration and the challenges experienced in the extraordinary times and conditions during the pandemic.

QUESTION 1 ANSWERS



Carsten Wendler started the discussion by posing a voting poll question and invited the audience to select one of two response choices.

Question 1:

What effect has the pandemic had on diversity in international arbitration?

Later in the session, Carsten Wendler asked another question for the virtual audience to answer.

Question 2:

Which aspect of diversity (equal opportunity) in international arbitration has mostly been affected by the pandemic?

Chiann Bao noted that arbitral institutions are facing a record number of cases and that arbitrators are busier than ever. There is increased awareness of the need to include women when creating arbitrator lists and a tendency by lawyers and clients to ensure that women are included. The number of female arbitrator appointments has not lessened during the pandemic; it may have increased. The move to the virtual world has allowed women in arbitration to have more visibility.

Gabriel Costa emphasised the key role clients play in promoting diversity in arbitration. Ultimately, clients and counsel working together can promote genuine diversity. Clients should ensure that they hire diverse teams. Younger arbitration participants and leaders are promoting a stronger commitment to diversity and appointing younger, diverse arbitrators.

Soledad Díaz stressed the situation of Latin America in this matter. Usually, arbitrator lists have a small number of women. To achieve greater equality in tribunals and provide a more professional service to clients, counsel should

review more carefully the credentials of the arbitrator candidates they propose. The pandemic has opened opportunities because it no longer matters geographically where you come from for virtual arbitrations and conferences. The pandemic helped to make the arbitrator selection process more global and gave greater visibility to women. Soledad Díaz acknowledged there were benefits to interviewing arbitrator candidates. There is no lack of female talent; what we need are opportunities for candidates to prove their value and their abilities; as such, arbitrator interviews are valuable. Choosing arbitrators who are committed to promoting diversity can facilitate the selection of a diverse chair or president of the tribunal. A written statement by arbitrators that s/he commits to diversity of arbitral tribunals could be very helpful in Latin America.

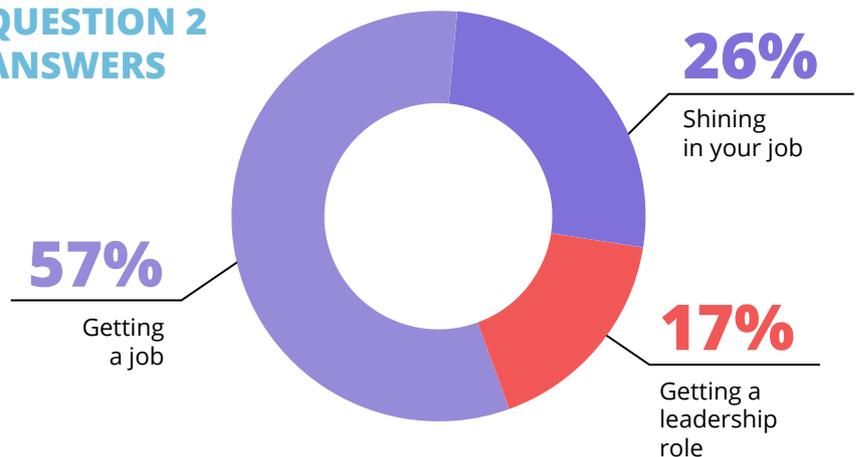
Latin America lags behind other parts of the world in terms of the transparency of arbitrators. Women Way in Arbitration (WWA) has started to approach institutions in smaller jurisdictions for statistics. Soledad Díaz noted

the importance for women arbitrators obtaining their first appointment. During the pandemic, we saw the doors open in terms of visibility, notwithstanding the challenges of the year. There is more access to mentoring programs and virtual networking across borders has now become possible. Women have increased opportunities for speaking engagements, and opportunities to write and to be published in a digital world.

Ndanga Kamau stated that it is too early to assess the impact of the pandemic on diversity. The pandemic has exposed many weaknesses as a society. Women bear the burden of home responsibilities. Some women are rejecting opportunities because they have increased responsibilities and burdens at home in the pandemic. Diversity is a concern without borders. It is not only a moral imperative, but a commercial imperative. It is easier for those who are already known in the arbitration circle to get appointed; while it is harder for those in regions where international arbitration is less common. The pandemic brought greater opportunities to participate in webinars and competitions with the elimination of travel and entry fees. When we return to in-person events, we should nonetheless encourage continued activity in the virtual world to maintain and improve opportunities for inclusion that have been created during the pandemic.

Submitted by Dana MacGrath, ArbitralWomen President, Omni Bridgeway Investment Manager and In-House Counsel, New York City, US

QUESTION 2 ANSWERS



‘Push for Parity: Practical Tools for Emerging Arbitrators’: ‘Arbitrating your first case – Experiences and Insights’, on 17 November 2020, by Webinar



Top to bottom, left to right: Michele Potestà, Lindsay Gastrell, Katherine Simpson, Sylvie Bebohi Ebongo and Christina Hioureas

On 17 November 2020, the [Equal Representation in Arbitration Pledge Young Practitioners Subcommittee](#) (ERA Pledge YPSC), hosted the third panel in its new webinar series ‘Push for Parity: Practical Tools for Emerging Arbitrators’, with support from [Young ArbitralWomen Practitioners](#) (YAWP). This event delved into the practicalities of ‘arbitrating your first case’.

The event was moderated by **Lindsay Gastrell**, Senior Counsel, Arbitration Chambers, with the speaker panel comprising of four experienced arbitrators, namely: Dr **Sylvie Bebohi Ebongo**, Co-Founder & Partner, HBE Avocats; **Christina Hioureas**, Partner and Chair, United Nations Practice Group, Foley Hoag; Dr **Michele Potestà**, Counsel, Levy Kaufmann – Kohler and Dr **Katherine Simpson**, Arbitrator, Simpson Dispute Resolution & 33 Bedford Row Chambers.

At the outset, the importance of preparation was stressed. It was considered crucial to be well versed in the facts of the case and the key issues in dispute in advance of any hearing, in order to make best use of the parties’ and tribunal’s time and to be in

a position to influence deliberations more significantly. Advice on how to foster positive working relationships with other co-arbitrators was given, with Christina Hioureas encouraging attendees to adopt the mindset that co-arbitrators should aim to consider themselves ‘three friends trying to piece together the puzzle’.

There may be instances where emerging arbitrators feel concerned about whether their views are being taken into account. Dr Sylvie Bebohi Ebongo cautioned against making negative assumptions in this regard. Such a feeling can often be unjustified, occurring due to our own biases. Experienced co-arbitrators are often understanding and appreciate the necessity of working collaboratively with all the members of the tribunal.

Discussion turned to the decision-making process. Dr Michele Potestà identified the need to face difficult decisions squarely, even if doing so may annoy one party. Such an eventuality is often unavoidable. Dr Katherine Simpson noted that the key consideration is to ensure that every decision’s reasoning demonstrates that the submissions of the losing party were considered and

understood. Unrepresented parties are particularly assisted by clarity and jargon free explanations, with Dr Sylvie Bebohi noting that one must be patient and may find oneself playing an educational role in such circumstances. This is acceptable as long as the arbitrator is mindful of not appearing to help one side prove its case.

Finally, a key strategy on which all speakers agreed was that it is essential to start writing the decision early. The process of setting out the procedural history and the parties’ respective positions aids understanding and facilitates the identification of any gaps in arguments that are likely to exist. Questions followed, with the panellists graciously addressing them all. Ultimately, attendees were provided with a wealth of advice to equip them in arbitrating that first case.



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

Submitted by Tope Adeyemi (FCIArb), ArbitralWomen member, Barrister, London, UK

New York Arbitration Week

In-House Counsel's Virtual Roundtable, on 16 November 2020, by Webinar



Top to bottom, left to right: Suzana Blades, Luis Martinez, Michael L. Martinez, Eric P. Tuchmann, Kai-Uwe Karl

On 16 November 2020, the AAA-ICDR hosted a webinar “In-House Counsel’s Virtual Roundtable” as part of New York Arbitration Week 2020. The session was moderated by **Eric P. Tuchmann**, the Senior Vice President, General Counsel and Corporate Secretary for the AAA-ICDR, and featured as panellists ArbitralWomen member in-house counsel **Suzana Blades** (Associate General Counsel, ConocoPhillips), **Kai-Uwe Karl** (Global Chief Litigation Counsel, GE Renewable Energy), and **Michael L. Martinez** (Senior Vice President & Associate General Counsel, Marriott/Bonvoy).

The panellists provided an overview regarding how their respective legal teams approached disputes. Kai-Uwe noted that GE Renewable Energy handles disputes from across the world in litigation, arbitration, and mediation

venues; his internal team participates more in larger cases, while providing input and support to regional counsel in smaller cases. Suzana mentioned that ConocoPhillips tries to participate more in the pre-dispute phase to mitigate potential conflicts and resolve disputes before they reach arbitration or litigation, remain active in all cases and participate in any important decisions. Michael noted that Marriott/Bonvoy has a similar approach. They often use courts for domestic matters and arbitration for international matters but have been transitioning more towards arbitration in domestic matters as well. Eric noted that from the AAA-ICDR’s perspective, the hands-on approach favoured by all panellists results in cases that proceed more efficiently.

With respect to selecting arbitrators, the panellists agreed that arbitrator

selection is probably one of the most important decisions and shared a common approach when using the party-appointed method. The aim is to find the best person for the case. The first step was to reach a consensus with outside counsel on the characteristics they seek in an arbitrator for the particular matter. It was not always important to choose a highly recognised arbitrator; each case is unique, and you want the right person for the dispute. Important attributes include a good reputation, an ability to persuade the fellow tribunal members and build consensus on the tribunal, and time availability needed for the case. Presiding arbitrators need strong case management skills and the ability to make tough decisions to keep the case on track. All panellists expressed their commitment to diversity when considering potential appointments. Eric noted the same commitment to diversity is shared by the AAA-ICDR and considered when it prepares its lists of arbitrators for the cases it administers. All panellists expressed positive experiences with the AAA-ICDR list method.

The panellists all embraced mediation and early resolution of disputes. Michael noted mediation should be encouraged but not a mandatory step. Eric added that the AAA-ICDR offers mediation in every case it administers. Kai-Uwe echoed that mediation should be included in the toolbox of dispute resolution mechanisms and included in dispute resolution clauses as a first step of an escalating clause. Suzana noted that she sees mediation being used more often domestically and hopes it will expand internationally.



Eric asked for views in selecting New York as a seat. Michael noted that his company has found New York a fine venue, although noting the high costs of arbitration (irrespective of location). Suzana noted that if the contract is governed by New York law, New York is a great option as a seat. Kai-Uwe observed that New York has high-quality lawyers and arbitrators.

Panelists generally agreed that they were seeing fewer disputes during the pandemic and that there was a focus on trying to resolve disputes faster and on quicker business terms. The increased use of virtual hearings is here to stay, including in hybrid capacities for case management and procedural conferences. Settlement conferences also can be conducted

virtually. We now have more options for international arbitrations. The recording of this program can be accessed [here](#) .

Submitted by Dana MacGrath, ArbitralWomen President and Omni Bridgeway Investment Manager & Legal Counsel, New York, USA

Stronger Together: Colloquy on Diversity and Perseverance, on 18 November 2020, by Webinar



Top to bottom, left to right: Dana MacGrath, Rekha Rangachari, Mérida Hodgson, Caline Mouawad

ArbitralWomen organised an event focused on the theme ‘Stronger Together: Colloquy on Diversity and Perseverance’ that featured two keynote presentations by ArbitralWomen members **Mérida Hodgson** and **Caline Mouawad**, in which each shared their respective professional and personal journeys as multicultural female ‘citizens of the world’. Each woman’s journey is poignant and inspiring. The event was co-moderated by ArbitralWomen President **Dana MacGrath** and ArbitralWomen Board Member **Rekha Rangachari**.

Mérida Hodgson began by emphasising that perseverance is key. She summarised her path with four epithets: ‘outsider’, ‘invisible me’, ‘what is not mine is not mine’ and ‘just do it!’

She described her journey as a multicultural woman in international arbitration as one of ‘constant adaptation’. An immigrant from the East Coast of Nicaragua, where the Moravian Church was central to her cultural experience as a child, Mérida explained that this background defined her and equipped her to manage life as a diverse woman in the United States. She observed that she has always been an outsider, as an immigrant, a female, and with brown skin. She did not have steady professional mentors and emphasised the importance of mentors, sponsors, and allies to progress diversity.

Mérida described feeling some colleagues looking past or through her, which she described as the ‘invisible me’ syndrome. Notwithstanding her

unique experience and qualifications to handle treaty arbitrations, Mérida felt unwelcome by the arbitration club. Nonetheless, she persevered. She accepted that life is not fair—and that ‘what is not mine is not mine’. She was grateful for any opportunities and worked intensely to make the most of them to build her practice. She chose to focus on successes and steps forward. Her overwhelming message was that, notwithstanding any challenges and obstacles, ‘just do it!’

Mérida Hodgson has never taken her success for granted. She dedicates substantial energy toward making the path for others less difficult. She urges that promoting women and diversity at every level starts with each of us and that we must all contribute to achieve progress: recruit and hire women and diverse people as counsel and arbitrators. Mentor and sponsor diverse talent. In closing, Mérida said that it was important to remember to be kind to each other and to support each other. With the support of allies, sponsors and the members of your community, ‘just do it’ as best you can!

Caline Mouawad began on a personal note, stating: ‘Everything I needed to know to build a career in international arbitration, I learned from my father’. She described her father



New York Arbitration Week



Slide shared by Caline Mouawad during programme: on left, Caline as a child with father in Lebanon; on right, her wedding day in the USA

as an inspirational figure who ‘did not fear change or sacrifice’, moving the family from Lebanon to Paris during the Lebanese Civil War and later to Houston at the height of the hostage crisis in Beirut.

Her father distilled the sum of his life experiences into three key pieces of advice that have been instrumental and path-determinative in Caline’s personal and professional journey. First: ‘get your education’. Not only formal academic education, but also the informal school of life. He instilled a desire to learn, a refusal to stagnate and a willingness to take chances and embrace change. Caline derived inspiration from her father to have the courage to seek a 1L summer internship in Paris, where she ‘had the opportunity to work for Laurie Craig, one of the deans of international arbitration’. She had no idea that this summer internship would decide the course of her career to practice interna-

tional arbitration. After law school, she worked at several prestigious global law firms. These life experiences and the relationships she developed enriched her personally and professionally — a mix of the formal and informal ‘education’ to which her father referred.

Second, ‘be your full, complicated self’. Caline struggled to reconcile her identity and sense of belonging — was she Lebanese, French, American, Texan? She asked her father for advice. Her father’s answer was simple: ‘I am a citizen of the world’. She was privileged to belong to all these groups — it was a strength and competitive advantage. Ultimately it became her license to be her ‘full, complicated self’ and an asset.

Third, ‘follow your path with conviction’ and trust yourself and your chosen path. After having her first child, Caline Mouawad chose to return to the practice of law on a reduced hours schedule, an ‘unconventional’ choice at the

time. She maintained a reduced hours schedule as her career advanced, even though it meant she made partner later than her peers. It was not always easy to manage, but she was determined to ‘follow her path with conviction’ and ultimately prevailed.

In closing, Caline noted that in all her personal and professional choices, she has tried to live up to her father’s expectations and hopes for her. His advice has been a beacon to her. She continues to follow his advice as ‘a guiding light’ in her continuing arbitration journey. She concluded: ‘my hope is that it may offer you some light as well’.

Attendees were empowered by Mélida Hodgson and Caline Mouawad’s candid narration of their respective journeys. The inspiring video is being shared widely. The ArbitralWomen member [directory](#) is a searchable resource to find talented women leaders in dispute resolution. Mélida Hodgson and Caline Mouawad are two shining examples.

 [Click here to watch and share the video.](#)

Submitted by Dana MacGrath, ArbitralWomen President and Omni Bridgeway Investment Manager & Legal Counsel, and Rekha Rangachari, ArbitralWomen Board Member and NYIAC Executive Director, New York City, US

ArbitralWomen Diversity & Perseverance Networking Event, on 18 November 2020, Online

In the evening, a virtual networking event followed the roundtable discussion themed ‘Stronger Together: Colloquy on Diversity & Perseverance’, participants were dis-

tributed into virtual breakout rooms, each with its own facilitator to prompt discussion. There were many virtual breakout rooms, given the high attendance. I participated in two rounds of

virtual networking at this event, which I describe below.

In my first breakout room, the discussion began with the question of transitions during a pandemic:



Attendees shared their experiences with respect to virtually onboarding in a new company and the difficulty of creating and fostering new relationships without organic interaction.

The conversation then flowed to empathy: 'Has the pandemic sparked more empathy or more apathy?' Some people experienced arbitrations suddenly becoming less adversarial and more congenial. Yet others reported that the ability to hide behind their screens emboldened people to communicate in a surly manner. All participants agreed that there are more emails in a pandemic world and a surplus of content, which can be overwhelming. A senior practitioner noted that there seems to be an increased pressure to keep working and be available at all hours. We have lost the concept of 'business hours' and 'business days'.

However, despite the difficulty and uncertainty of these changes in lifestyle, the session ended on a positive note, with the comment that we are all experiencing



Veronica Dunlop

newness, which is a powerful tool for growth. Indeed, considering the importance of continued education — a guiding principle shared by **Caline Mouawad** in the morning's roundtable — the fact that we are all being challenged to learn and adapt is surely a benefit.

In my second breakout room, the session leader began by asking what travel people missed, due to the pandemic. Participants lamented the cancellation of a multi-country European odyssey, a long-awaited family reunion in Peru, visits home to Portugal and India, and the chance to compete in-person in the Vis Moot in Vienna.

But, like the first session, the second ended with positivity. Participants agreed that it is awkward and unfamiliar to network inside the Zoom boxes. You cannot walk up to someone and initiate a one-on-one conversation. But at the same

time, Zoom can also be an equaliser. There is unprecedented access. Suddenly, people who would be unable to attend events due to cost or distance can now join virtually from anywhere in the world. Introverts and junior-level practitioners, who might otherwise be too intimidated to speak up, feel more comfortable engaging when there is a facilitator leading the discussion. This increase in access and engagement means that more ideas and perspectives are heard. Indeed, this new virtual world may be just the change we needed to increase diversity and create meaningful inclusion.

Back in the full group, the closing remarks applauded the growing number of women in arbitration and highlighted the importance of considering diversity, not just on a gender scale, but also in a geographical and generational context. It takes courage to enter the virtual world, and, as one participant put it, diversity is only an invitation to the dance. Being invited to dance is inclusion.

Submitted by ArbitralWomen member Veronica Dunlop, Law Clerk with Jaroslawicz & Jaros, New York City, US

Non-Signatories Before and After Arbitration: Compelling Arbitration and Enforcing Awards, on 18 November 2020, by Webinar

The Chartered Institute of Arbitrators (CI Arb) New York Branch and the New York International Arbitration Center (NYIAC) co-sponsored an event on non-signatories as part of New York Arbitration Week 2020. The session was broken into two parts: compelling arbitration and enforcing awards.

The first part, moderated by Independent Arbitrator and NYIAC

Global Advisory Board Co-Chair **Eric A. Schwartz**, included ArbitralWomen member **Teresa Giovannini** of Lalive, **Benjamin G. Davis** of the University of Toledo School of Law, and **Richard Kreindler** of Cleary Gottlieb Steen & Hamilton. The discussion centred on the recent U.S. Supreme Court decision in *GE Energy Power v. Outokumpu Stainless USA, LLC*, 140 S. Ct. 1637

(2020) [🔗](#). The U.S. Supreme Court ruled in June 2020 that the New York Convention does not conflict with domestic equitable estoppel doctrines, permitting a non-signatory to enforce an arbitration agreement based on equitable estoppel.

The panellists, each from leading global jurisdictions (Teresa Giovannini from Switzerland, Benjamin G. Davis



Top to bottom, left to right: Benjamin G. Davis, Teresa Giovannini, Eric A. Schwartz, and Richard Kreindler

Sahani of the Arizona State University School of Law, **Teddy Baldwin** of Steptoe & Johnson LLP, and **William H. Taft** of Debevoise & Plimpton LLP. The discussion focussed on enforcing awards against non-signatories who participated in the arbitral proceedings or who become involved at the award enforcement stage.

William H. Taft illustrated the US approach through [CBF Industria de Gusa S/A v. AMCI Holdings, Inc., 850 F.3d 58 \(2d Cir. 2017\)](#), where the US Court of Appeals for the Second Circuit held that award enforcement against non-signatories was governed by the law of the forum, citing doctrines of *alter ego*, piercing the corporate veil, and vicarious liability. Victoria S. Sahani provided the US law framework to enforce against a non-party. Teddy Baldwin focussed on enforcing awards against non-signatory sovereigns.

[Click here to access the recording of this event.](#)

Submitted by Rekha Rangachari, ArbitralWomen Board Member and New York International Arbitration Center (NYIAC) Executive Director, New York City, US

from the U.S., and Richard Kreindler from Germany), discussed the different jurisdictional approaches to the issue, ultimately agreeing that most courts would compel arbitration in such a circumstance, based on a narrow reading of New York Convention Article II, which does not explicitly prohibit non-signatories' compelling and enforcing arbitration agreements.

Benjamin G. Davis shared his concern that the U.S. Supreme Court's decision creates a rabbit hole within the New York Convention, adding cost and delay before ultimately reaching arbitration. Richard Kreindler shared the German perspective, notable as Germany was both the seat and choice of substantive law in *Outokumpu*. He confirmed German courts have interpreted Article II to allow enforcement of arbitration agreements at the request of a non-signatory, focussing on whether the signatories had an intent to extend the agreement to the non-signatory. Also, under German case law and commen-

tary, Article VII(1) does not limit a court's analysis to domestic law.

Teresa Giovannini concluded with a comparative analysis. The Swiss Federal Supreme Court has held that Article II does not prevent extension to third parties, applying Swiss substantive law and finding that a clause can bind individuals who have not signed the contract. In contrast, English and French courts favour the law of the seat rather than substantive domestic law. She noted that most courts would not find Article II a barrier to non-signatories.

The second part, moderated by ArbitralWomen and CIArb member **Nancy M. Thevenin**, included ArbitralWomen member **Victoria S.**



Left to right: Teddy Baldwin and Steven Skulnik



Left to right: William H. Taft, Nancy M. Thevenin and Victoria S. Sahani

The Challenges of Multi-Party and Multi-Contract Issues in International Arbitration and the Anticipated ICC Rules Changes, on 19 November 2020, by Webinar



Left to right: Jennifer Kirby, Claudia Salomon, Laura Abrahamson, Paul Di Pietro, and Ziva Filipic

The ICC Court of International Arbitration (ICC Court) sponsored a roundtable event during New York Arbitration Week 2020 on the 2021 revisions to the ICC Rules of Arbitration ('2021 Rules') addressing multi-party and multi-contract disputes, focussed on joinder, consolidation and the constitution of the arbitral tribunal.

The session was moderated by Independent Arbitrator **Jennifer Kirby** and included ArbitralWomen member **Laura Abrahamson** of JAMS and Members of the ICC Court Secretariat, ArbitralWomen member **Claudia Salomon**, **Ziva Filipic**, and **Paul Di Pietro**. The panel marked Claudia Salomon's first public appearance since the ICC announced its historic recommendation that she serve as the ICC Court's first female President beginning 1 July 2021.

Joinder

Claudia Salomon explained that since 2012, the ICC Rules have allowed for joinder of additional parties after the confirmation or appointment of any arbitrator with the consent of *all* parties to the arbitration, but the 2021 Rules mark a shift, by dispensing with the need for an agreement from all parties when joining a consenting additional party. Paul Di Pietro shared examples of

how joinder restrictions under previous versions of the ICC Rules resulted in inefficiencies (*i.e.*, unilateral veto to joinder and ensuing parallel proceedings). Under the 2021 Rules, the tribunal is empowered to 'take into account all relevant circumstances' to avoid duplicative proceedings. The 2021 Rules thus strike a balance between promoting efficiency and reducing the risk of any award being set aside, by requiring that a party joined after the constitution of the arbitral tribunal accept the tribunal, and as the case may be, the Terms of Reference. Laura Abrahamson underscored the positive impact of this revision for corporations that often face complicated disputes with multiple parties.

Consolidation

Claudia Salomon explained that arbitrations could be consolidated under previous versions of the ICC Rules in limited circumstances. The 2021 Rules now explicitly allow for consolidation where all of the claims made in the arbitration arise from the 'same arbitration agreement *or* agreements' and apply to claims not made under the same arbitration agreement or agreements.

Multi-Party Arbitration

Panellists highlighted the importance of intentionally considering

multi-party arbitrations at the outset, when negotiating complex transactions. Panellists also discussed claimants' ability to frame a multi-party arbitration and the benefits of bringing all claims against all parties in a single arbitration in the first instance, even if not always possible. Respondents also gain the ability to shape an arbitration by joining additional parties that the claimant did not name.

Constitution of the Tribunal

Panellists discussed the ICC Court's ability to appoint all members of the arbitral tribunal in exceptional circumstances 'to avoid a significant risk of unequal treatment and unfairness that may affect the validity of the award'. Ziva Filipic shared a key case study, and the discussion shifted to the necessity of balancing party autonomy with enforceability of the award in such exceptional circumstances.



[Click here to access the recording of this event.](#)

Submitted by Katie Gonzalez, ArbitralWomen member and Associate at Cleary Gottlieb Steen & Hamilton LLP, New York, US.



New York Arbitration Week

Fordham Conference on International Arbitration and Mediation: Key Issues in International Dispute Resolution, on 20 November 2020, by Webinar



Top to bottom, left to right: Edna Sussman, Kun Fan, Moti Mironi, Jacqueline Nolan-Haley, Thomas Stipanowich and Kathleen Paisley

The Annual Fordham Conference on International Arbitration and Mediation took place virtually on 20 November 2020. Led by Co-Chairs **Louis B. Kimmelman** of Sidley Austin LLP and ArbitralWomen member and Independent Arbitrator **Edna Sussman**, the conference examined several hot topics in three separate sessions.

Combinations and Permutations: Creating a Solution-Driven Dispute Resolution Process

The first session was a roundtable moderated by ArbitralWomen member **Kathleen Paisley** of Ambos Lawyers and Edna Sussman and it included panellists **Kun Fan** of the University of New South Wales, **Jeremy Lack** of LAWTECH.CH, **Moti Mironi** of Haifa

University, and **Thomas Stipanowich** of Pepperdine School of Law, sharing perspectives on innovative, ‘mixed mode’ dispute resolution mechanisms. The moderators and panellists are members of the Mixed Mode Task Force – a combined effort between the International Mediation Institute, the College of Commercial Arbitrators, and the Straus Institute for Dispute Resolution at Pepperdine School of Law — that examines combining different dispute resolution processes in parallel, sequentially or as integrated processes. Please access the recording of Session 1 [here](#).

The discussion highlighted how mediators can utilise different tools to be more effective, including how neutrals can facilitate tailor-made dis-

pute resolution processes. Panellists also examined the cultural challenges faced in cross-border dispute resolution, including neutrals “double hatting” and “changing hats” (from mediator to arbitrator and vice versa). Flexibility of the process was a key takeaway, without being mired in nomenclature that may differ from one jurisdiction to another. Moderators and panellists affirmed the critical role of neutrals to encourage parties to propose alternative processes and encourage parties to try something new – towards a more efficient solution in the advancement of creative procedural design.

International Arbitration and EU Law: What Next?

Professor **George A. Bermann** of Columbia Law School presented the Keynote, exploring the relationship between international arbitration and the European Union (EU). He discussed the international arbitration community’s unique ability to self-govern, self-improve and meaningfully (albeit imperfectly) tackle challenges on its own, set against demands for transparency, attentiveness to users’ interests and constant self-examination. George A.



George A. Bermann



Top to bottom, left to right: Pamela Bookman, Nicole Saharsky, Paul Clement, Kwaku Akowuah, Louis B. Kimmelman, Martine Cicconi, Caline Mouawad and Ari MacKinnon

Bermann then discussed the EU as a paradigm example of a ‘stalemate’ to international arbitration self-governance that is not easily resolved, citing to the [Achmea judgment](#) by the European Court of Justice that held that arbitration clauses in certain intra-EU BITs are contrary to EU law — affirming the EU’s assertion of vertical autonomy as to Member States and horizontal autonomy over international actors against the backdrop of inconsistent enforcement and non-enforcement of intra-EU awards in courts outside the EU. George A. Bermann notes both sides have hardened their views with new contenders emerging, including the multilateral investment court. Please access the recording of the Keynote [here](#).

Does 28 U.S.C. § 1782 Apply to Private International Commercial Arbitrations?

The third and final session debated the applicability and scope of [28 U.S.C. § 1782](#) (Section 1782) to private international commercial arbitrations via

mock US Supreme Court argument. Section 1782 allows ‘a foreign or international tribunal or (...) any interested person’ to apply to a US district court for US-style discovery. The bench for the mock argument was comprised of Former US Solicitor General **Paul Clement**, **Nicole Saharsky** of Mayer Brown and **Pamela Bookman** of Fordham Law School. **Kwaku Akowuah** of Sidley Austin argued for the Petitioner, with ArbitralWomen member **Caline Mouawad** of Chaffetz Lindsey arguing on behalf of *amici* professors supporting Petitioner’s position. Virginia Deputy Solicitor General **Martine Cicconi** argued for Respondent and **Ari MacKinnon** of Cleary Gottlieb Steen & Hamilton argued on behalf of *amici* in support of Respondent. Please access the recording of Session 2 [here](#).

Kwaku Akowuah and Caline Mouawad urged an expansive interpretation of the phrase ‘international tribunal’ in Section 1782 to include private international arbitral tribunals, consistent with the plain meaning of

the words ‘international tribunal’ and comports with Congress’s long-stated pro-arbitration policy. Martine Cicconi and Ari MacKinnon argued in response that ‘international tribunal’, when read in the provision’s proper context, clearly intended to exclude tribunals created in private international arbitrations, with references to letters rogatory and a tribunal’s ‘practices and procedures’ demonstrating Congress’s consideration that an ‘international tribunal’ was a State-sanctioned body. Questions from the bench highlighted the apparent divergence between language and policy in the Section 1782 analysis, making it a truly ‘hard case’.

The full-day conference ended with a networking reception to celebrate the success of all of Virtual New York Arbitration Week 2020.

Submitted by Rekha Rangachari, ArbitralWomen Board Member and New York International Arbitration Center (NYIAC) Executive Director, New York, US

Emissions Trading: International Law and Dispute Resolution, on 18 November 2020, by Webinar



Top to bottom, left to right: Kathryn Khamsi, William Acworth, Jacob Werksman and Lisa DeMarco

On 18 November 2020, Three Crowns LLP co-hosted an event with the British Institute of International and Comparative Law discussing the opportunities and risks for investors in emissions trading systems and the eventual role of arbitration in ensuring their efficacy. The panel was chaired by Three Crowns Partner and ArbitralWomen member **Kathryn Khamsi** and brought together climate change experts **William Acworth**, Head of the Secretariat of the International Carbon Action Partnership (ICAP); **Lisa DeMarco**, Senior Partner and CEO at Resilient LLP (formerly DeMarco Allan LLP) and Vice Chair of the International Emissions Trading Association (IETA); and **Jacob Werksman**, Principal Adviser to the Director General for Climate Action in the European Commission. Underscoring the significance of the issues being discussed, the panel drew a large audience of arbitration practitioners, government lawyers, civil society and corporate executives. The context of the panel was the Paris Agreement, which requires States to limit global average temperature increases through curbing their emissions. International emissions

trading and other forms of international carbon markets can play an important role in reducing emissions by providing governments and corporates lower compliance costs, encouraging investment, and putting a price on carbon. Emissions trading works through a government-imposed limit on emissions. Regulated companies receive or purchase “units” such as permits. At the end of each compliance period, companies surrender one unit for each tonne of emissions generated. Emissions markets are growing in importance and prevalence. To date, 45 schemes have been implemented or are being developed or considered, and several schemes are linked, allowing market participants to trade across jurisdictions and encouraging State co-operation.

The panellists noted that while the growth in markets and market participants generates opportunities for much needed emissions reductions, it also requires participants to navigate regulatory and political risks. For example, a market participant may be subject to regulatory action by multiple State and inter-State bodies. Participants may also need to navigate a range of different types of

emissions units subject to different compliance rules. Some governments have cancelled or withdrawn from emissions markets, limited the use of certain types of emissions units in their jurisdiction, or taken measures affecting the value of emissions units. Dispute resolution can help provide greater certainty to market participants facing such risks. For example, the panellists noted claims for expropriation or protection of legitimate expectations could arise if governing bodies take arbitrary or capricious decisions, fail to give market actors the right to be heard before making a particular decision, or fail to adhere to some semblance of policy consistency in their decisions.

Concluding the event, the panellists predicted emissions trading will be increasingly important in lieu of or in addition to the rules being developed under the Paris Agreement. Despite the complexities and potential risks involved, emissions trading presents a significant opportunity. One panellist observed that the additional emissions reductions resulting from emissions trading under the Paris Agreement are worth nearly US\$250 billion per year—an “extraordinary value” for investors and the climate that should not be avoided.



[Click here to watch the recording of the event](#)

Submitted by Nicola Peart, ArbitralWomen member, Associate at Three Crowns LLP, Washington DC, USA



British Institute of International and Comparative Law



Delos Dispute Resolution's TagTime Webinars

This live webinar series, currently in its third season, features leading counsel, arbitrators and academics discussing substantive issues in international arbitration, followed by a Q&A with the audience. Each episode concludes with the guest speaker tagging a future guest. ArbitralWomen Board Member **Amanda Lee** and Dr **Kabir Duggal** have co-hosted this live webinar series since its inception, in April 2020. ArbitralWomen is a proud supporter of TagTime [🔗](#) (see a report on Episode 6, Season 1, on page 21 of [Issue N°41](#) [📄](#) of this newsletter; see also Delos President **Hafez Virjee's** article on this webinar series and the one titled 'In conversation with Neil', on page 9 of [Issue N°41](#) [📄](#) of this newsletter and the report on page 11 of said issue).

We have gathered here four



Co-hosts Kabir Duggal and Amanda Lee

reports on TagTime webinars, mainly with ArbitralWomen members as guest speakers. **Myriam Khedair**, Law clerk, White & Case LLP, Paris, France

is the author of the first three reports, while **Anne-Marie Grigorescu**, New York State attorney-at-law (pending admission) wrote the last one.

Season 2, Episode 1: Samaa Haridi on 'Legal Privilege in International Commercial Arbitration', on 16 September 2020

ArbitralWomen member, international arbitrator and attorney Samaa Haridi's presentation tackled some of the most challenging aspects of the concept of privilege in international arbitration. Examples include situations where the protection of legal privilege is prioritised over the

complete disclosure of evidence, even when such disclosure may enable the tribunal to determine what is true in an ongoing proceeding. Samaa also explored some of the differences and similarities between the concept of privilege and the concept of commercial confidence and how such concepts

apply to international arbitration.

Notable practical issues raised by the question of privilege in international arbitration include the extent to which different jurisdictions treat privilege differently, leading to complications when it comes to due process and equality of the parties.



Delos Dispute Resolution's TagTime Webinars



Samaa Haridi

Striking differences exist between the approach to questions of privilege adopted by common law and civil law jurisdictions, in particular when it comes to addressing fundamental issues like the question of waiver and

in-house counsel privilege.

With regard to institutional rules, Samaa noted that most institutions either fail to expressly address this topic in their rules or address it broadly and generically, leaving the resolution of questions of privilege to the discretion of the arbitral tribunal. Article 22 of the [ICDR International Arbitration Rules](#), which requires arbitral tribunals to apply the most protective rule relating to privilege, to the extent possible, is a notable exception. In addition to the limited guidance provided by institutional rules, Article 9 of the [IBA Rules on the Taking of Evidence](#) provides a helpful framework to assist the tribunal when approaching questions of privilege, albeit the IBA Rules provide limited assistance to tribunals seeking to determine the nature of legal privilege and do not indicate how it should be applied.

Some of the possible approaches to claims of privilege addressed by Samaa included the extensive scope of the tribunal's discretion, the impact of the parties' choice of law, the closest connection test, and the most protective law approach. The advantages and disadvantages of each of these different approaches were identified, with particular consideration given to their impact on predictability, the parties' expectations, and the efficiency of arbitral proceedings.

An energetic question and answer session followed, after which the hosts thanked Samaa for her contribution and she tagged **David Huebner** to appear as a guest on a future episode of the series.

 [Click here to watch a recording of the webinar.](#)

Season 2, Episode 5: Crina Baltag on 'Recoverability of In-House Counsel Costs in International Arbitration', on 14 October 2020

ArbitralWomen member, arbitrator and academic Crina Baltag started off by observing that the recoverability of in-house counsel costs of arbitration is not discussed with sufficient thoroughness despite statistics indicating that arbitration continues to grow in popularity, even in places where it used to be less prevalent. This calls for exploring the increasingly important role of in-house counsel in arbitration proceedings. The costs of in-house counsel are often still considered to be costs attributable to the party's business and not to the arbitration, despite the key role that in-house counsel play in building

case strategy, compiling pertinent documents, revising and drafting parts of the submissions, or even representing the parties at hearings.

Most institutional arbitration rules are silent on the approach to be adopted to the recoverability of the costs associated with internal legal management, but many arbitral rules offer the tribunal some flexibility when it comes to the question of the recoverability of in-house counsel costs. Crina referred, for example, to the [SCC Rules of 2017](#) (Article 50), the ICC Arbitration Rules of 2021 (Article 38(1)), the [LCIA Arbitration Rules of 2020](#) (Article 28.3), the [UNCITRAL](#)



Crina Baltag



Delos Dispute Resolution's TagTime Webinars

Arbitration Rules of 2010 [\(Article 40 \(2\)\(e\)\)](#), and the [ICSID Arbitration Rules of 2006 \(Rule 28\(2\)\)](#). The language typically used in these rules to cover in-house costs would be “legal costs” and “other costs”.

The practice of arbitration has evolved since the '80s and Crina recognised and demonstrated that tribunals are now more open to the idea

of recoverability of in-house counsel costs. However, as with any other cost incurred during arbitral proceedings, it was noted that the tribunal would require evidence of costs associated with in-house counsel and as such, parties would be wise to bear in mind the need to produce such evidence from the outset of arbitral proceedings, if such costs are to be sought.

A vigorous question and answer session followed, after which the hosts thanked Crina for her contribution and she tagged **Loukas Mistelis** as a guest to appear on a future episode of the series.



Click here to watch a recording of the webinar.

Session 2, Episode 6: Nayla Comair-Obeid on 'Robust Arbitrators: How to Deal with Dilatory/Guerrilla Tactics During the Course of the Arbitral Proceedings', on 21 October 2020



Nayla Comair-Obeid

International arbitrator, academic and counsel **Nayla Comair-Obeid** gave a thorough description of the dilatory tactics used by parties at each stage of the proceedings. At the outset, for example, a party may seek to use the vagueness of the wording of an arbitration agreement to avoid adopting a cooperative approach. They may delay the constitution of the tribunal, refuse to sign the Terms of Reference in an ICC arbitration,

or refuse to pay the advance on costs. Such tactics may continue throughout the proceedings, with some parties deliberately seeking to provoke an arbitrator so they can later challenge that arbitrator for lack of fairness or a violation of due process. Arbitrators need to be sufficiently experienced and robust in order to resist such destabilising techniques and ensure the efficiency of the proceedings.

Other common dilatory tactics include submitting an excessive amount of documentation, continuously and abusively requesting extensions, persistently refusing to submit documents on time, ignoring the tribunal's procedural orders and, in a particularly extreme case, even refusing to grant the opposing party a site visit, on the basis that participation in such a visit would risk breaching confidentiality and expose protected trade secrets.

Nayla discussed some procedural incidents that are commonly used as dilatory tactics, such as submitting

groundless bankruptcy allegations to suspend the proceedings and submitting evidence and claims late, in order to prolong the proceedings. Nayla also identified some of the methods available to arbitrators in order to counter such tactics, including assessing whether such actions are used with the sole purpose of disrupting the proceedings and the importance of having sufficient knowledge of the applicable law, in order to make the right decisions. Nayla used real-life examples from her prolific career as an arbitrator to illustrate her topic and provide practical examples of some of the complications faced by tribunals.

A lively question and answer session followed, after which Amanda Lee and Kabir Duggal thanked Nayla for her contribution and she tagged **Larry Shore** as a guest for a future episode of the series.



Click here to watch a recording of the webinar.



Delos Dispute Resolution's TagTime Webinars

Session 2, Episode 13: Catherine Amirfar on 'Cybersecurity and International Arbitration: A Wake-up Call', on 9 December 2020



Catherine Amirfar

On 9 December 2020, ArbitralWomen member Catherine Amirfar, Co-Chair of the Public International Law Group at Debevoise & Plimpton, and current President of the American Society of International Law, presented this subject. Catherine structured her presentation in three parts:

1. risks and implications of cyberattacks on data,
2. prevention of cyberattacks, and
3. practical tips for arbitration practices.

Catherine began by discussing the definition of data breach under the [GDPR \(article 4 \(12\)\)](#) while noting the possible adverse consequences for individuals and businesses, such as breach of privacy, loss of control over personal data, identity and data theft, financial loss, etc. She highlighted that personal data is interpreted broadly and can even include one's name,

business address, and any numbers associated with one's person available on the internet. As Catherine noted, 'The speed and efficiency of the system allow criminals to easily operate across borders'.

Catherine acknowledged that the Covid-19 pandemic has increased the use of virtual platforms and consequently enhanced the number of opportunities for cybercriminals. For instance, she noted that 'from the 1st of January 2020 to the 4th of December 2020 there were 502 breaches of unsecured protected health information (this is only one subset) compared to 885 breaches of all subsets in 2019'.

She then highlighted that international arbitration is a prime target for cyberattacks, due to the high-value nature of the disputes, involvement of multiple jurisdictions, and the sensitive data being digitally exchanged and often communicated via unencrypted means. Two significant data breach cases were referenced: Libananco v Turkey (an ICSID case involving electronic surveillance), and the cyberattack on the website of the Permanent Court of Arbitration during the China-Philippines maritime boundary dispute.

Further, Catherine noted that 'the biggest challenge for practitioners is the weakest link problem'. In other words, sole arbitrators and law firms who do not have a robust security infrastructure become ripe targets for sensitive data disclosure, breach of attorney-client confidentiality, adverse reputational damage, costs, etc.

Turning next to prevention, Catherine referred to new guidance for parties conducting virtual proceedings during the Covid-19 pandemic, highlighting existing cybersecurity guidelines and protocols such as the [IBA Cybersecurity Guidelines](#).

In part 3 (practical tips) of the webinar, Catherine shared five tips to prevent cyberattacks while highlighting that balancing convenience and risk is key. She stressed the importance of parties establishing a plan with their counsel to counter cyber threats. Before taking questions from the audience, Catherine concluded that although insurance policies can act as a backstop, quantifying risk can pose challenges.



Click here to watch a recording of the webinar.



Networking in the new normal, on 1 December 2020, by Webinar



Top to bottom, left to right: Carrie Ballew, Kate Stillman, Rebeca Mosquera, Catherine Bratic, Diane Okoko, Levi Pratt, Ema Vidak Gojkovic, Samantha Rowe, Elizabeth Chan and Dana MacGrath

On 1 December 2020, Hogan

Lovells LLP, ArbitralWomen, New York International Arbitration Center (NYIAC) and International Centre for Dispute Resolution Young & International (ICDR Y&I) co-hosted a webinar entitled “Networking in the new normal.” Moderator **Samantha Rowe** (Partner, Debevoise & Plimpton) was joined by fellow ArbitralWomen members **Catherine Bratic** (Senior Associate, Hogan Lovells), **Elizabeth Chan** (Associate, Three Crowns), **Ema Vidak Gojkovic** (Independent Counsel and Arbitrator) and **Rebeca Mosquera** (Associate, Akerman), along with **Diane Okoko** (Partner, Marcus-Okoko).

The esteemed panel explored this timely topic and shared personal advice on forming and maintaining connections in the virtual world.

Catherine suggested auditing your online presence by reviewing social media profiles. These platforms serve as our virtual introduction to others, and maintaining current profiles is critical.

When participating in virtual meetings, consider the energy we exude, particularly when liaising with contacts in different time zones. Virtual formats can be impersonal, and Catherine challenged the audience to make a practice of reaching out to at least one person afterwards to forge connections.

Diane reflected on the essence of networking: connection. She shifted from her comfort zone of in-person meetings to participating in weekly Sunday virtual dinners or drinks with colleagues and friends and learned that “the essence of connection does not change in this alternate mode.”

Fresh off the recent success of the ArbitralWomen Connect pilot programme, Elizabeth discussed how this initiative provides the opportunity for meaningful virtual contact on a one-on-one basis. Rebeca shared her firsthand experience of the programme pairing her with an Iranian practitioner with whom she may not have crossed paths. Through their Zoom sessions, this contact led her to Ema’s Mute Off Thursdays gatherings.

Elizabeth noted that this time presents a unique opportunity for both geographic and gender diversity in panel compositions. We now have the occasion to promote the visibility of women who may not normally have a profile. Her advice for virtual event hosting is to aim for smaller, moderated events with all cameras on. Moderators should use icebreakers to bring personal sentiments into professional events.

Ema highlighted an underlying misconception that networking is what you can get from it, when in reality it is

about what you can contribute to others’ lives or careers. She proposed viewing networking as giving a gift to someone, in particular with young practitioners. She also spoke of understanding where people fit in our circles, be they regional, from our organisations, or ones we build around our values. Contribute regularly to those in each of your circles.

Rebeca has used this time to curate purposeful connection via her “tea at three.” She uses this time to check on those in her life and has challenged herself to extend her circle beyond the arbitration field, all while maintaining authenticity.

Samantha echoed the concepts of maintaining purpose and mindfulness while navigating this virtual norm. On the points of authenticity and consistency, she shared an analogy credited to her colleague, David Rivkin, that likens networking to gardening. Start by spreading the seeds, then water those seeds. Eventually some connections will grow.

A recording of the webinar is available here.

Submitted by Christine Falcicchio, ArbitralWomen member, Founding Principal, Sopra Legal, Miami, USA

New York Women in Arbitration Holiday Virtual Gathering, on 2 December 2020, by Webinar



and to continue to do so throughout the pandemic (and beyond).

Some of the attendees appear above (row by row, left to right): **Rekha Rangachari, Dana MacGrath, Ina Popova, Yasmine Lahlou, Erika Levin, Lindsay Gastrell, Caline Mouawad, Ruth Teitelbaum, Claudia Salomon, Lindsey Schmidt, Luli Hemmingsen, Nancy Thevenin, Gretta Walters, Melida Hodgson, Christina Hioureas, Lucy Reed, Emma Lindsay, Noiana Marigo, Deborah Enix-Ross and Lauren Friedman.** Additional attendees not in the photo include **Ema Vidak Gojkovic** and **Julissa Reynoso.**

It was a happy virtual gathering juxtaposed against the shadows of a very difficult year of pandemic and loss. Everyone felt blessed to be alive and be together.

ArbitralWomen President Dana MacGrath organised a fun, light-hearted gathering of New York Women in Arbitration that took place on 2 December 2020.

The group toasted many who recently had been promoted and/

or appointed to leadership positions and celebrated all having persevered through a very challenging 2020. Some women were unable to attend and some who attended had to leave early so they are not in the photo. We agreed to gather again virtually soon

Submitted by ArbitralWomen President Dana MacGrath and Omni Bridgeway Investment Manager and Legal Counsel, New York City, US

28th Croatian Arbitration Days, on 3 December 2020, by Webinar

The Croatian Arbitration Days is one of the most respected conferences in Central and Eastern Europe in the field of arbitration. It is organised by the Permanent Arbitration Court of the Croatian Chamber of Economy ('PAC CCE'). For the first time in its history since its creation in 1992, instead of its traditional format of a two-day in person event, the Conference was held as a one-day virtual conference with two webinars:

- Panel 1: 'Arbitral hearings during the pandemic period' (in Croatian) and
- Panel 2: 'New developments in international investment arbitration' (in English), which was moderated by Professor **Hrvoje**



Ana Stanić

Sikirić (President of PAC CCE). **Ana Stanić** (ArbitralWomen member, Director, E&A Law Limited) firstly commented on the Intra-BIT Termination Agreement and underlined that under EU law the *Achmea* judgment retroactively invalidates intra-EU investor-State dispute clauses. She next explained that the right of national courts not to give retroactive effect to CJEU judgments on grounds of legal certainty and *res judicata* is circumscribed when such judgments concern fundamental principles of EU law, e.g. state aid and competition. She further explained why courts outside the EU requested to enforce arbitral awards rendered in respect of 'invalid' intra-EU BITs are unlikely to consider themselves

bound by EU law, and briefly outlined the position of Swiss and US courts.

Finally, she discussed the UK Supreme Court's decision regarding the enforcement of the *Micula* ICSID award of February 2020. In this decision the UK Supreme Court took the view that the UK's obligation under the

ICSID Convention to enforce such award trumped its duty of sincere co-operation under Article 4(3) TFEU to give effect to a state aid decision of the EC.

Ana concluded her presentation by saying that she expects that ICSID will become the preferred mechanism for resolving intra-EU BIT and ECT disputes

and that investors will try to opt for the seat of the arbitral proceedings and the enforcement of the awards to be outside the EU.

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

Sixth Edition of the Casablanca Arbitration Day, on 3 December 2020, by Webinar

On 3 December 2020, the Casablanca International Mediation and Arbitration Centre (CIMAC) hosted a virtual edition of its annual conference. This year's seminar gathered four debates centred on the role of international arbitration in 'helping or hindering the environment and public health'. The event was sponsored by ArbitralWomen.

The first panel, composed of **Lucy Greenwood** (Greenwood Arbitration) and **Patrick Thieffry** (Independent Arbitrator) addressed the way commercial arbitration is resolving environmental issues. The discussion confirmed that commercial arbitration provided numerous tools to resolve environmental issues, including emergency arbitration and interim measures mechanisms. Both panellists concluded that arbitration rules ought to incentivise parties to appoint arbitrators with particular expertise in environmental law when it comes to disputes involving environmental ramifications.

The second round of debates centred around how arbitration could be more environmentally friendly. **Laetitia De Montalivet** (Director, Arbitration and ADR, Europe, ICC International Court of Arbitration) and Professor Dr **Maxi Scherer** (Special Counsel, Wilmerhale, London / Member of the Court of Arbitration of CIMAC) provided the audience with examples of concrete measures that practitioners and arbitral institutions are taking to reduce the carbon footprint of international arbitra-



Top to bottom, left to right: Jacob Grierson, Kamal Sefrioui (interpreter), Maxi Scherer and Laurent Levy

tion, including a total digitalisation of the procedures and following the nine concrete steps of the Green Pledge. In this sense, the new 2021 ICC Arbitration Rules are providing for 'greener arbitration' by promoting the administration of remote hearings. Concerns were nonetheless raised as to the possibility for arbitral tribunals to impose paperless arbitration on the parties and vice-versa or the 'zoom fatigue' that has appeared with the multiplication of virtual hearings in complex arbitrations.

Professors **Arnaud de Nanteuil** (University Paris Est Créteil) and **Jorge Viñuales** (University of

Cambridge) held a third panel about the protection of the environment through investment arbitration. After highlighting that 89% of the treaties included references to the environment since 2008, the panellists advised that the language regarding environmental regulation should be more precise in the future, and that imposing obligations on the investors could be a balanced solution to limit the environmental impacts of investment, as provided for in the Morocco-Nigeria 2016 BIT.

The last panel tackled the topic of Covid-19-related disputes and the procedural challenges that

the pandemic has raised. **Jalal El Ahdab** (Bird & Bird) and **Mohamed S. Abdel Wahab** (Zulficar & Partners) stated that the assistance by technical service providers in arbitral proceedings is now established. However, institutional protocols are only providing objectives rather than obligations at this stage, such as for the 2020 Africa Arbitration Academy Protocol on Virtual Hearings in Africa. Ultimately, the panellists agreed on

the fact that a particular advantage of the use of technology to conduct arbitration proceedings is the significant cost reduction in the procedure through the elimination of travel and accommodation.

Beyond the Covid-19 pandemic, **Laurent Lévy** (Lévy Kaufmann-Kohler) concluded by encouraging the practitioners to adopt a proactive attitude in reforming the law and practice of arbitration to include

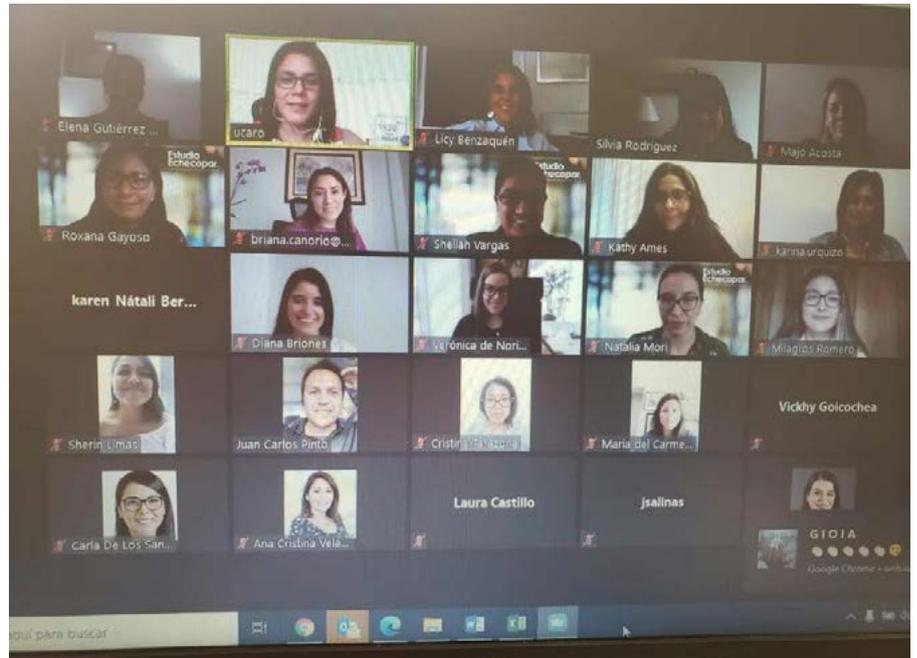
environmental and public health considerations.

Submitted by **Aïda Amor**, ArbitralWomen member, PhD Candidate at La Sorbonne University, Paris, France; **Munia El Harti Alonso**, PhD Candidate at Universidad Complutense de Madrid, Madrid, Spain; and **Maroua Alouaoui**, Associate, Afrique Advisors Correspondent of Mayer Brown, Casablanca, Morocco

Un Paso Adelante Hacia La Diversidad ('A Step Forward towards Diversity'), on 4 December 2020, by Webinar

On 4 December 2020, ArbitralWomen held a webinar titled 'A Step Forward towards Diversity', with **Elena Gutierrez García de Cortázar**, **Silvia Rodriguez** and ArbitralWomen member **Licy Benzaquén** as speakers and **Ursula Caro Tumba** as moderator. The objective of this conversation between the four speakers was to share their experiences as women arbitrators.

The importance of having arbitral awards issued by a diverse panel of arbitrators, in terms of gender, ethnicity and background, was highlighted. Different points of view can be exchanged during deliberations, broadening the foundation of the arbitral award, and thus making it more fair, complete and balanced.



It was noted, however, that only a small percentage of arbitrator candidates are women. Many women do not apply to arbitral institutions, because they feel that between work, home, and children, they will not have enough time. It is therefore critical for institutions, and professionals within the arbitration community to encourage greater participation of women as arbitrators.

The professional life of women remains different from that of men. Many women do not apply to arbitration centers for the same reason: lack of time. That is, due to the greater domestic

demands placed on women than on men, who have more space to focus on work.

This leads us to reflect on the fact that there is still an inequality gap between men and women professionals, and discussions such as the present one are critical in raising and exposing the challenges and trying to find solutions to effect real change.

Submitted by Licy Benzaquén Gonzalo, ArbitralWomen member, partner, and Flavia Scaramutti Rodríguez, associate, area of Energy and Natural Resources, Estudio Olaechea, Lima, Peru

Kickoff Session of the ArbitralWomen Parental Mentorship Programme, on 7 December 2020, by Webinar

On 7 December 2020, ArbitralWomen, together with Freshfields Bruckhaus Deringer, hosted the kickoff meeting of the Parental Mentorship Programme. Led by **Louise Woods**, **Gisèle Stephens-Chu** and **Katie Hyman**, the virtual discussion group was attended by women in Europe, the Middle East, Asia and North America. The programme began with introductions from the organisers, who explained that the purpose of the Parental Mentorship Programme was to create a support network for parents and prospective parents and provide members with the opportunity to discuss the specific concerns and challenges of parenting while maintaining and developing an international arbitration career. Each participant then introduced themselves and told the group about their children and some of the ways in which they had managed their

combined roles as parents and lawyers.

The group next discussed various aspects of parenthood and work: the challenges they had experienced when returning to work after babies were born, dealing with client expectations as a new parent, taking on new responsibilities at work and dealing with exhaustion, and the perception of team members and supervisors to the needs of parents. The particular difficulties experienced by members during the Covid-19 pandemic was also discussed, and it was interesting to see how experiences from members around the world were similar to each other. Participants seemed to particularly appreciate the range of experiences of other members: some participants were very new parents, facing all the challenges of combining babyhood with work, whereas other participants had older children and could reassure the newer parents that

the exhaustion of early parenthood would not go on forever, but that different challenges would take their place! The atmosphere was relaxed and the conversation flowed, and many participants commented that they enjoyed the opportunity to discuss these issues with peers in this informal setting. Another session was held on 10 February, which also led to a lively discussion. We are looking forward to the next discussion, taking place on 21 April 2021 at 13:00 CET, which all interested ArbitralWomen paid-up members are invited to attend.



To register, please click here to send an email.

Submitted by Katie Hyman, ArbitralWomen member, Partner at Rimon Law and Member of Victoria Associates, Washington, D.C.

Techniques for Resolving Life Sciences Disputes, on 9 December 2020, by Webinar



Left to right: Stephen P. Gilbert, Harrie Samaras, Angela Foster and Conna A. Weiner

The complexities and risks

inherent in the often global disputes among companies in life sciences industries, such as pharmaceuticals, medical devices and diagnostics, call for unique and flexible approaches to dispute prevention and resolution. On 9 December 2020, neutrals **Angela Foster**, as moderator, and **Stephen P. Gilbert**, **Harrie Samaras** and **Conna A. Weiner**, as speakers, took a fresh look at the menu of dispute resolution processes and tools for use in life sciences disputes. The

panellists discussed a series of detailed scenarios drawn from their experience as mediators and arbitrators to illustrate how to avoid disputes in the first place and resolve them quickly and efficiently once they arose. The scenarios involved collaboration, licensing, IP and other issues that often arise in the research, development, manufacturing and commercialisation of life sciences products. The programme was presented by the [Silicon Valley Arbitration and Mediation Center](#); all of the panellists are listed

on that organisation's invitation only, peer-vetted Tech List, a group of neutrals with specialised knowledge and experience in the technology sector, as well as life sciences.

A recording of the event can be accessed [here](#).

Submitted by Conna Weiner, ArbitralWomen member, Mediator and Arbitrator, FCI Arb, New York and Boston, MA, US

Delos Dispute Resolution's Inaugural Remote Oral Advocacy Programme Finals, on 11 December 2020, by Webinar



Top to bottom, left to right: Wendy Miles QC, The Hon. Charles Brower, Prof. Stephan Schill, Nikki Coles, Vladimir Nefediev, Trisha Mitra, Vanessa Moracchini, Elizabeth Chan, Heather Clark, Camilla Gambarini, Clàudia Baró Huelmo.

On 11 December 2020, Delos Dispute Resolution (Delos) hosted the advocacy finals of its inaugural Remote Oral Advocacy Programme ('ROAP 2020'). ROAP is an advanced advocacy training programme aimed at providing participants with opportunities to practise and develop their oral submission and expert cross-examination skills in two separate courses. The 2020 ROAP faculty comprised leading arbitration practitioners and experts from firms and chambers including Alvarez & Marshal, Asafo & Co., Bär & Karrer, Clifford Chance, CMS, Dechert, Essex Court Chambers, King & Spalding, Knoetzel, Legance, Miranda & Asociados, Noerr, PwC and Three Crowns. Every participant in the programme had the benefit of learning from a mentor from the faculty, who provided them with advice and guidance throughout the programme. ROAP was organised by **Hafez R Virjee** (Delos President) and **Anna Jermak** (Delos Communications and Events Manager).

ROAP 2020 culminated in a public final featuring the most persuasive and skilled participants on each course. The tribunal was comprised of the Honourable Judge **Charles Brower** (Independent Arbitrator, Twenty Essex

St. Chambers), as presiding arbitrator; **Wendy Miles QC** (ArbitralWomen member and Barrister, Twenty Essex St. Chambers) and Professor **Stephan Schill** (University of Amsterdam).

The ROAP cross-examination course finalists were **Trisha Mitra** (Associate, Shearman & Sterling) and **Vanessa Moracchini** (Associate, Three Crowns), with experts, **Nikki Coles** (Managing Director, Alvarez & Marshal) and **Vladimir Nefediev** (Partner, PwC).

The ROAP oral submission courses finalists were **Clàudia Baró Huelmo** (Associate, Withers Worldwide), **Elizabeth Chan** (ArbitralWomen Board Member and Associate, Three Crowns), **Heather Clark** (Legal Advisor,

Iran-United States Claims Tribunal) and **Camilla Gambarini** (Senior Associate, Withers LLP).

After considered deliberation, the tribunal announced Trisha Mitra, Elizabeth Chan and Heather Clark to be the winners, together with Vladimir Nefediev among the experts.

A recording of the event can be accessed [here](#). Delos will be running ROAP in 2021 in Asia, Europe, the Middle East, Africa and Latin America (in Spanish).

Submitted by Elizabeth Chan, ArbitralWomen Board Member and YAWP Co-Director, Associate at Three Crowns, and Anna Jermak, Delos Communications and Events Manager



FREE LIVE WEBINAR, FRIDAY 11 DECEMBER, 1PM LONDON / 2PM PARIS / 5PM DUBAI

A Dialogue on International Arbitration v. Insolvency 2.0, on 15 December 2020, by Webinar



Top to bottom, left to right: Stefan Kröll, Ishaan Madaan, Vesna Lazić, Prakhar Chauhan, Patricia Shaughnessy, Loukas Mistelis and Christian Campbell

On 15 December 2020

ArbitralWomen members Dr. **Patricia Shaughnessy** and Dr. **Vesna Lazić** participated alongside Prof. **Loukas Mistelis** and Dr. **Stefan Kröll** in an online virtual event 'A Dialogue on International Arbitration v. Insolvency 2.0' hosted by **Christian Campbell** of the Center for International Legal Studies and organised by **Arbinsol** as part of their ongoing 'Post-Pandemic Series'.

This event also formed part of a dialogue series discussing the intricacies and conflicts between the two independent fields of law. The 'dialogue' primarily focused on arbitration agreements and insolvencies and discussed two recent noteworthy judgements highlighting the difference in approaches by English and Canadian courts — **Petrowest Corporate v. Peace River Hydro Partners** from Canada and **Riverrock Securities Limited v. International Bank of St. Petersburg** from the United Kingdom.

The dialogue — with attendance from 48 countries — sliced through

several layers of insolvency and arbitration to understand the fundamentals involved. Key issues include the cross-border aspect, the interplay with national regulatory regimes, the timing of commencement of bankruptcy, the powers of the insolvency administrator, rights of stakeholders, etc. The speakers also discussed the need for legislation in different jurisdictions with respect to identifying litigation and arbitration as a factor for the insolvency administrator to consider. When dealing with an insolvent party, one question that arises is 'whose dispute is it — the insolvent or the administrator?'

Whether it is a matter of substance or procedure, or whether a claim acquires a nationality (as in the Riverrock case the dispute was considered to be English) and questions related to arbitrability, are some of the questions that emanated from the discussion and were addressed by the highly experienced speakers. There are multiple perspectives on arbitrability in different jurisdictions. In some

cases, the dispute may be arbitrable but the insolvency administrator is not bound by previous agreements submitting disputes to arbitration. There are practices where the insolvency administrator has the discretion to be bound by the agreements entered into by the debtor.

Also spotlighted during the event was a book entitled '**Insolvency Proceedings and Commercial Arbitration**' written by Dr. Lazić towards the end of the 20th century, which was arguably ahead of its time and highly topical in the pandemic stricken state of affairs.

The dialogue was moderated by Arbinsol's founders **Ishaan Madaan** and **Prakhar Chauhan**. The event was supported by New York International Arbitration Center (NYIAC), #CareersInArbitration and TDM/OGEMID. The event flyer and recording can be found [here](#) .

Submitted by Ishaan Madaan and Prakhar Chauhan, Founders, Arbinsol

ICC Qatar YAF ‘Current Issues and Opportunities for the Next Generation’, on 15 December 2020, by Webinar



Left to right: Nader Ibrahim, Saad Hegazy, His Excellency Sheikh Dr. Thani Bin Ali Al-Thani, Pamela McDonald and Thomas Williams

On 15 December 2020, ICC Qatar Young Arbitrators Forum (“ICC YAF”) hosted a webinar with panellists ArbitralWomen Member Pamela McDonald, Nader Ibrahim, His Excellency Sheikh Dr. Thani Bin Ali Al-Thani and Thomas Williams.

The topic was: Current Issues and Opportunities for the Next Generation, and the panel discussed a broad array of issues which they anticipated users of arbitration in Qatar would come across in the coming years.

Pamela discussed the possible impact of the introduction in Qatar’s arbitration law (which was introduced in 2017), of the concept of ‘Competent Courts’ and ‘Competent Judges’. She explained that Qatar’s arbitration law is based on the UNCITRAL Model Law, but it has introduced some unique, bespoke drafting. One of the most important (and helpful) amendments to the Model Law, Pamela explained, is the introduction of an option for parties to elect to use [Qatar’s International Court](#), established within the Qatar Financial Centre (‘QFC IC’), rather than local courts, for matters arising from the arbitral proceedings which require court intervention.

Parties with Qatar-seated arbitrations can agree on which Competent

Court and Competent Judge to give jurisdiction. The Competent Court can either be:

1. the Civil and Commercial Arbitral Disputes Circuit in the Court of Appeals; or
2. the First Instance Circuit of the Civil and Commercial Court of the QFC. The Competent Judge can either be:
3. the enforcement judge in the First Instance Circuit; or
4. the enforcement judge in the Civil and Commercial Court of the QFC.

In essence, the law introduced a unique circuit and bench of enforcement judges to handle enforcement, annulment of arbitral awards and interim application matters.

Parties’ ability to access the English speaking QFC IC means they can expect proceedings to follow this

court’s [procedural rules](#) which are based on English procedural rules. They therefore have the benefit of a great body of guidance available for most hypothetical scenarios that may arise. The QFC IC also has a bench of seasoned judges who have a very good reputation for reaching the right answer and, helpfully, their decisions are published online in English on the [QFC IC’s website](#).

Pamela surmised that future arbitration practitioners in Qatar will be the ones making history, by bringing cases before the new QFC IC and will set precedents and make submissions about the proper interpretation and application of the 2017 Qatari arbitration law, as regards interim applications, annulment and enforcement applications.

Pamela explained that the above is an important and market-driven change which will surely attract foreign investment.

The panel discussion also covered the [Prague Rules](#), remote hearings in Qatar as a result of Covid-19, the extent to which the introduction of a new PPP law in Qatar (enacted in 2020) will increase the volume of arbitrations and the impact of Qatar’s ratification of the [Singapore Mediation Convention](#).

Submitted by Pamela McDonald, ArbitralWomen member, Senior Associate, Pinsent Masons, Doha, Qatar

**Arbitration in Qatar:
Current Issues & The Next
Generation Opportunities**

Investment treaties of Ukraine: questions and challenges, on 23 December 2021, by Webinar



Українська Арбітражна
Асоціація

REGISTER <http://bit.ly/2J1gJU9>
INFO@ARBITRATION.KIEV.UA

ІНВЕСТИЦІЙНІ УГОДИ УКРАЇНИ: ПИТАННЯ ТА ВИКЛИКИ



23 грудня 2020
17.00 (Київ)



МОДЕРАТОР
ОЛЕНА ПЕРЕПЕЛИНСЬКА
Президент УАА



МОДЕРАТОР
АННА ГІЯР САЖКО
Член Правління УАА



СПІКЕР
ІВАН ЛІЩИНА
Заступник Міністра юстиції України,
Уповноважений у справах
Європейського суду з прав людини



СПІКЕР
ТАРАС КАЧКА
Заступник Міністра розвитку
економіки, торгівлі та сільського
господарства України

Left to right: Olena Perepelynska, Anna Guillard Sazhko, Ivan Lischina and Taras Kachka

On 23 December 2020, the Ukrainian Arbitration Association (UAA) organised its X webinar on the topic of Ukrainian BITs. **Olena Perepelynska**, President of the UAA, and ArbitralWomen Member **Anna Guillard Sazhko**, board member of the UAA, had the pleasure to talk with two prominent professionals who have first-hand knowledge of the topic: **Taras Kachka**, Deputy Minister – Trade Representative at the Ministry for Development of Economy, Trade and Agriculture of Ukraine, and **Ivan Lischina**, Deputy Ministry of Justice, State Agent before the European Court of Human Rights at the Ministry of Justice of Ukraine. The recording of the webinar in Ukrainian is available [here](#).

Among others, the following topics were discussed:

Termination and renegotiation of BITs

Since 2000, Ukraine has reviewed a number of BITs but the new texts do not contain anything revolutionary.

One of the problems for the State to resolve in this process is the rising number of investment treaty arbitrations initiated by companies beneficially owned by Ukrainian nationals, most often, based

on the ECT or on the Netherlands – Ukraine BIT. This BIT — one of the most ‘used’ BIT in arbitrations against Ukraine — expires in 2022 and, most likely, there will be developments in this regard, so as to limit the possibility for Ukrainian businesses to create company structures that establish companies in the Netherlands to enable them to bring arbitrations against Ukraine based on it. In both the ECT and the Netherlands – Ukraine BIT, it would be advantageous for Ukraine to add a requirement of substantial business activities to the definition of “investor”.

Current and potential cases against Ukraine

Ukraine has nine ongoing arbitrations. The Russian Federation – Ukraine BIT and the Netherlands – Ukraine BIT remain the most used BITs to initiate arbitration against Ukraine.

Philipp Morris v. Ukraine and *Skyrizon Aviation v. Ukraine* are at the initial stage and there are around ten notices filed by the investors in green energy.

Institutional memory vs formal documents

So far Ukraine has relied more on

‘institutional’ memory when negotiating BITs, pursuing the long-standing state policy of attracting investments. However, there are several factors that might precipitate a change in this approach. First, Ukraine is among the most ‘popular’ respondent states in the region and has accumulated experience in the field. Second, some Ukrainian businesses invest in other jurisdictions and the Ministry of Justice is aware of several situations, when Ukrainian investors had no BIT to rely upon to protect their interests in the foreign jurisdiction. So, Ukraine should think not only about attracting as many investments as possible using BITs, but should also consider protecting its own investors, especially in negotiations with the states not belonging to major trade partners of Ukraine.

For more on UAA’s activities and upcoming events, click [here](#) and follow on [LinkedIn](#).

Submitted by Olena Perepelynska, ArbitralWomen member, Partner Integrites, Head of International Arbitration and President of the UAA, Kiev, Ukraine and Anna Guillard Sazhko, ArbitralWomen member, Associate, Shearman & Sterling, Paris, France

ICADR ADR Diversity and Inclusivity, on 23 December 2020, by Webinar



Top to bottom, left to right: Sushil Kumar Verma, Tanisha Sidhu, Maguelonne de Brugiere, Dana MacGrath, Clarissa Coleman, Tiffany N. Comprés and Gagandeep Singh

The International Centre for Alternative Dispute Resolution (ICADR) organised an event on ADR Diversity and Inclusivity that was held via webinar. Panellists included ArbitralWomen President **Dana MacGrath**, Investment Manager and Legal Counsel at Omni Bridgeway, together with ArbitralWomen members **Clarissa Coleman**, Litigation and Arbitration Partner at K&L Gates LLP and Chair of its London Diversity and Inclusion Committee and **Tiffany Comprés**, Partner at Fisher Broyles LLP, as well as **Maguelonne de Brugiere**, Legal Counsel at Standard Chartered Bank. The event was moderated by **Tanisha Sidhu**, Psychologist Mediator and Counsellor. Welcome remarks were delivered by **Sushil Kumar** and closing remarks were delivered by **Gagandeep Singh**.

Dana MacGrath described some of the diversity initiatives that were launched in 2020 by ArbitralWomen and/or its members, including [ArbitralWomen Connect](#), the social media campaign 'Diversity is

Equally Important for Virtual Events', [Mute Off Thursdays](#), [Digital Coffee Break in Arbitration](#), [American Idol](#), and [myArbitration](#). Second, she described recent events by the ERA Pledge, including the [Checklist of Best Practices for the Selection of Arbitrators](#), which encourages diversity in arbitrator selection and provides information on potential sources of candidates, and the [Pledge Corporate Guidelines](#), specifically designed for corporates to use when implementing the diversity aims of the Pledge.

Clarissa Coleman described diversity challenges faced and progress made in litigation and arbitration. She also discussed the statistics in appointments of diverse panels since the signing of the Pledge and the significance of women leading arbitral institutions.

Maguelonne de Brugiere discussed the work by [the ERA Pledge Young Practitioners Subcommittee](#) since its launch in 2020, including the formation of its University Outreach Task Force, Female Arbitrator Skills

Building Task Force and Parenthood Taskforce.

Tiffany Comprés described ways for ADR practitioners to secure panel appointments and how diversity and inclusion improves the fairness and quality of awards. She also discussed the importance of publication of statistics with respect to diversity in arbitrator appointments.

In conclusion, each panellist shared a personal message to women, people of colour and other minority arbitration practitioners, the LGBTQ+ community, and other ADR enthusiasts who face diversity and inclusivity challenges in their professional lives. Many thanks to **Suvir Sidhu** for all her work to organise the event, which was broadcast Live on Facebook.



Click here to watch the video recording.

Submitted by Dana MacGrath, ArbitralWomen President and Investment Manager, Legal Counsel at Omni Bridgeway, New York City, 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 November 2020 that readers may have missed.

Upgrade of ArbitralWomen Membership System



Benefits of ArbitralWomen membership

As a leading organisation promoting women and diversity in international dispute resolution, membership of ArbitralWomen continues to grow globally and gain increased stature and recognition.

We aim to maximise the benefits of ArbitralWomen membership for all members, irrespective of their age or level of experience, jurisdiction, or their role in dispute resolution.

Clients and counsel regularly visit ArbitralWomen's website searching for dispute resolution practitioners in many roles and search our website for publications on specific topics.

The many **benefits** of ArbitralWomen membership include:

- Searchability under [Members Directory](#) and [Find Practitioners](#), enabling others to find profiles and potentially engage or refer work to members
- Promotion of dispute resolution speaking engagements on our [Events page](#) and on social media
- Visibility of articles, once added to the members' profile, under [Publications](#)
- Exposure in our periodic ArbitralWomen [Newsletters](#) through the inclusion of reports about the events
- Exposure on our [News](#) page if members contribute a news article relating to diversity and dispute resolution
- Recognition on our [News about ArbitralWomen Members](#) page of

29 November, 2020

ArbitralWomen is delighted to

share that we have upgraded our website membership page to offer a more user-friendly application and renewal process.

In order to renew membership or to apply for membership, click on **LOGIN** or **APPLY NOW** to be directed to a new page. Existing members will be asked to reset their password for security purposes. New joiners will be asked to complete either an individual membership application or a corporate membership application.

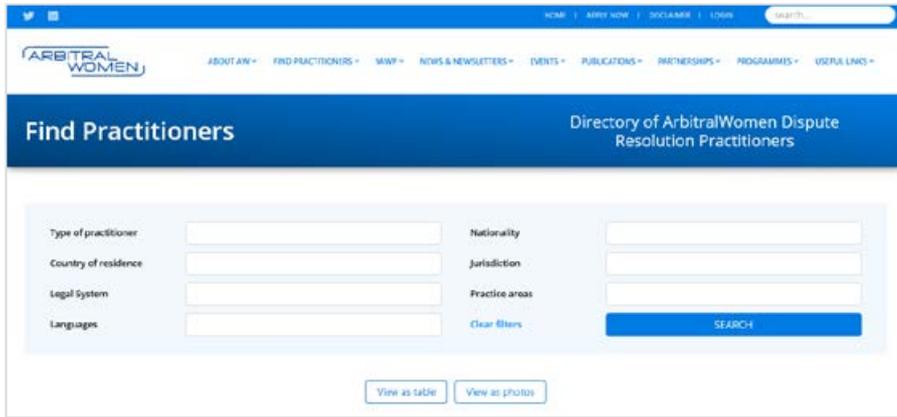
As the new year fast approaches, now is an excellent time to check whether it is time to renew membership and to update profiles to reflect full skillset and experience.

Increasing visibility by updating profiles

Members who update their member's profile in our Members Directory increase their visibility and receive potential engagements and referrals.

The ArbitralWomen Multi-Criteria Selection Tool (available [here](#)) allows a tailored search of our members and their credentials based on various criteria, including for example geographical region, language fluency, and areas of expertise, as well as the (multiple) roles our members perform in dispute resolution.

Publications are also an important demonstration of members' expertise. Members are encouraged to take a few minutes to list them within their profile, and to upload them to the extent permitted by the publisher.



- When members' firm subscribed a corporate membership, they can ask their firm to add them to the list of members whose membership fees are paid directly.
- When members' firm subscribed a corporate membership but the firm does not add them to the list of members whose membership fees are paid directly by the firm, they are entitled to a discounted rate of 135 Euros nonetheless, extended to all members of the firm.
- When the firm has not yet subscribed a corporate membership, encourage it to do so and to include members from your firm, regardless of whether they are already ArbitralWomen members.

We value all of our members. Submit any questions to membership@arbitralwomen.org.

ArbitralWomen Membership Committee
Gaëlle Filhol, Rebeca Mosquera, Mirèze Philippe, Rose Rameau, Donna Ross

- promotions, moves and professional achievements
- Opportunities to publish articles on the Kluwer Arbitration Blog via ArbitralWomen's section of and cooperation relationship with the [Kluwer Arbitration Blog](#)
- Participation in ArbitralWomen's [Mentorship](#) and [Parental Mentorship](#) programmes
- [Networking](#) with other female practitioners, including virtual networking opportunities through ArbitralWomen Connect

- member), the membership renewal is effective from the date on which it would have expired, avoiding any lapse in membership.
- If membership has expired: if members cannot find their name in our Members Directory, it is likely that membership has lapsed, they can connect to their profile to verify if they need to renew.
- Corporate membership:
- When members benefit from a corporate membership paid by their firm, their firm must renew for them.

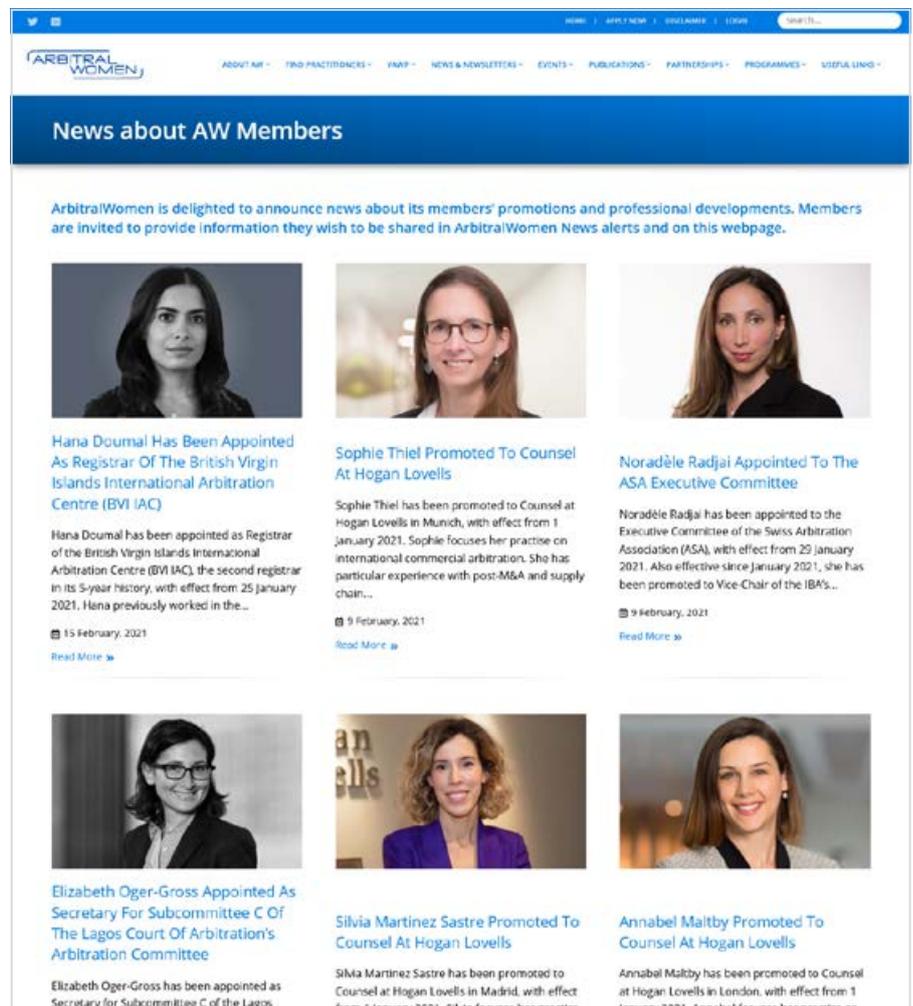
Logistics of renewing or joining as an ArbitralWomen Member

- **Individual membership fee:** 150 Euros
- **Corporate membership for 5 members:** 650 Euros (instead of 750), and 135 Euros (instead of 150) for each additional member irrespective of where she is based.
- Membership term: one year from the beginning of the month following payment, irrespective of the date of payment, with immediate access to the profile.

Not yet a member?
CLICK TO APPLY NOW

Renew now: if your membership has lapsed or is about to expire, renew now by logging into your account.

- If membership is still valid: no need to wait until the eve of membership expiry to renew. If members renew now (individually or as a corporate



Launch of Racial Equality for Arbitration Lawyers (REAL)



#letsgetREAL!

REAL Racial Equality for Arbitration Lawyers

By Dana MacGrath, ArbitralWomen
President and Omni Bridgeway
Investment Manager and Legal Counsel
28 December, 2020

Racial Equality for Arbitration Lawyers (REAL) is a new initiative launched by a group of global lawyers practicing international arbitration who are committed to striving to achieve racial equality for arbitration lawyers.

REAL is led by co-chairs ArbitralWomen Board member **Rekha Rangachari**, ArbitralWomen member **Crina Baltag** and **Kabir Duggal**. The organisation is incorporated as a non-profit entity under the laws of New York.

The REAL Steering Committee includes ArbitralWomen members **Crina Baltag**, **Chiann Bao**, **Louise Barrington**, **Mélida Hodgson**, **Sara Koleilat-Aranjo**, **Dana MacGrath**, **Mirèze Philippe**, **Rekha Rangachari** and **Nancy Thevenin**. Other members of the REAL Steering Committee include **Funke Adekoya**, **Cecilia Azar Manzur**, **Christopher Campbell**, **Eleonora Coelho**, **Earl Rivera-Dolera**, **Kabir Duggal**, **Mansi Karol**, **Jaroslav Kudrna**, **Tafadzwa Pasipanodya**, **Rana Sajjad Ahmed**, **Fernando Tupa** and **Salim Sleiman**.

REAL looks to champion under-represented groups in international arbitration. Anyone who wants to contribute to promoting awareness of the lack of racial diversity and facilitate change can be a mem-

ber. There is no membership fee. Members are simply encouraged to help facilitate the cause for greater racial representation in international arbitration. Together the Steering Committee and members of REAL aim to facilitate dialogue, action, and change.

A core goal of REAL is to increase access to the "arbitration club" – to open the door to more practitioners. One avenue is to offset the socio-economic limitations for many entering the international arbitration field with community-building for young and mid-level practitioners.

Key strategic aims of REAL include progressing racial equality and representation of other unrepresented groups in international arbitration and international law more generally, considering the challenges posed by intersectionality when it comes to diversity and inclusion, creating a platform to address issues of systemic discrimination and implicit bias in international arbitration, collaborating with and supporting other initiatives that address diversity and inclusion to make international arbitration equitable for all participants, and creating a safe space for under-represented groups in international arbitration to discuss the challenges they face.

"Windows open in moments to activate us, as a community, to create change. What lies at the core of any grassroots movement like REAL is the belief that we can do it better

together. The Pandemic has taught us that we are resilient, adaptable, and ever evolving. In step with this, inspired by the gold standard initiatives like ArbitralWomen already in place or nascent in form like REAL, we are anchored by fundamental pillars of access and advocacy," remarked **Rekha Rangachari**, co-chair of REAL and Executive Director of the New York International Arbitration Center.

*"We need to address diversity in international arbitration in a comprehensive manner" commented **Crina Baltag**, co-chair of REAL and Senior Lecturer at Stockholm University. "While racial diversity might not be the most comfortable of conversations, we need to begin somewhere. REAL was created to facilitate this dialogue."*

Kabir Duggal, co-chair of REAL and Senior International Arbitration Advisor at Arnold & Porter Kaye Scholer LLP noted, *"Recent events in the US and around the world have placed racial diversity in the spotlight. This gives us an opportunity to reflect on the realities of racial representation in our own international practice. This is an impetus for REAL. We look at the success of ArbitralWomen and the Equal Representation in Arbitration Pledge as models for us to collaborate together to address the broader goals of diversity in our practice. Indeed, the support of ArbitralWomen is pivotal to us as we formulate and think of racial diversity. Will you get #REAL with us?"*

REAL will launch formally on 18 January 2021 with two virtual inauguration sessions at 9am and 5pm Eastern Standard Time (EST). Stay tuned for details on the launch event and REAL initiatives on [REAL'S LinkedIn handle in](#). All who are interested in learning more about REAL are welcomed to register free of charge to attend.

#letsgetREAL!

The New List: Arbitrators of African Descent with a U.S. Nexus

By *ArbitralWomen* Members *Eunice Shang-Simpson* and *Shayda Vance*
7 January, 2021

This article reports on the “The New List: Arbitrators of African Descent with a U.S. Nexus” (“The New List”), which New York-based arbitrator **Nancy M. Thevenin** of Thevenin Arbitration, and Michigan / London-based arbitrator **Katherine Simpson** of Simpson Dispute Resolution, both members of *ArbitralWomen*, prepared in response to the perceived shortage of African American arbitrators.

Thevenin and Simpson began their work in February 2020 and initially published The New List in June 2020. In August 2020, Thevenin and Simpson published the first update of The New List, which now contains bios, websites, and contact information for several arbitration professionals of African descent. The [New List](#) was compiled based on peer recommendations and referrals from attorneys, institutions, and associations. Thevenin and Simpson are grateful for the advice and assistance of Professor **Ben Davis** at the University of Toledo and 2018 recipient of the *ArbitralWomen* Champion of Change Award; Professor **Adrien Wing** of the BASIL and the University of Iowa; independent arbitrator **Brent Clinkscale**; Atlanta-based lawyer and President of the National Bar Association **Tricia “CK” Hoffler**; and the American Bar Association’s minorities committee, among others.

The New List contains 123 potential appointees or hires of African descent and as Katherine Simpson comments, “this alleviates the all-too-frequent lament, the same as inspired the *ArbitralWomen* Member Directory, that ‘we would hire and appoint, if only we had a list of people to choose from.’” Throughout, the New List has been intended to enable individuals and organizations — whether law firms, institutions, or disputing parties — to find and contact “just the right person” for every role, be that as arbitrator, speaker, expert, counsel, mediator, or even new

hire — whether as a lateral or as a newly qualified professional.

The New List includes *ArbitralWomen* members **Deborah Enix-Ross, Mélida Hodgson, Lisa Love, Emilia Onyema, Tina Patterson, Rose Rameau, Rebekah Ratliff, Natalie Reid, Funmi Roberts, Eunice Shang-Simpson, Naomi Tarawali, Nancy M. Thevenin** and **Shayda Vance**.

Tafadzwa Pasipanodya, a US-Zimbabwean partner at Foley Hoag and chair of the firm’s Africa practice group, commented: “*Katherine and Nancy deserve high praise for developing this list. Just as the arbitration world is coming to grips with its severe racial diversity deficit, Katherine and Nancy have provided an extraordinary service for those seeking to identify arbitration practitioners of African descent who are ready to be included in tribunal panels, counsel teams, and administrative institutions.*”

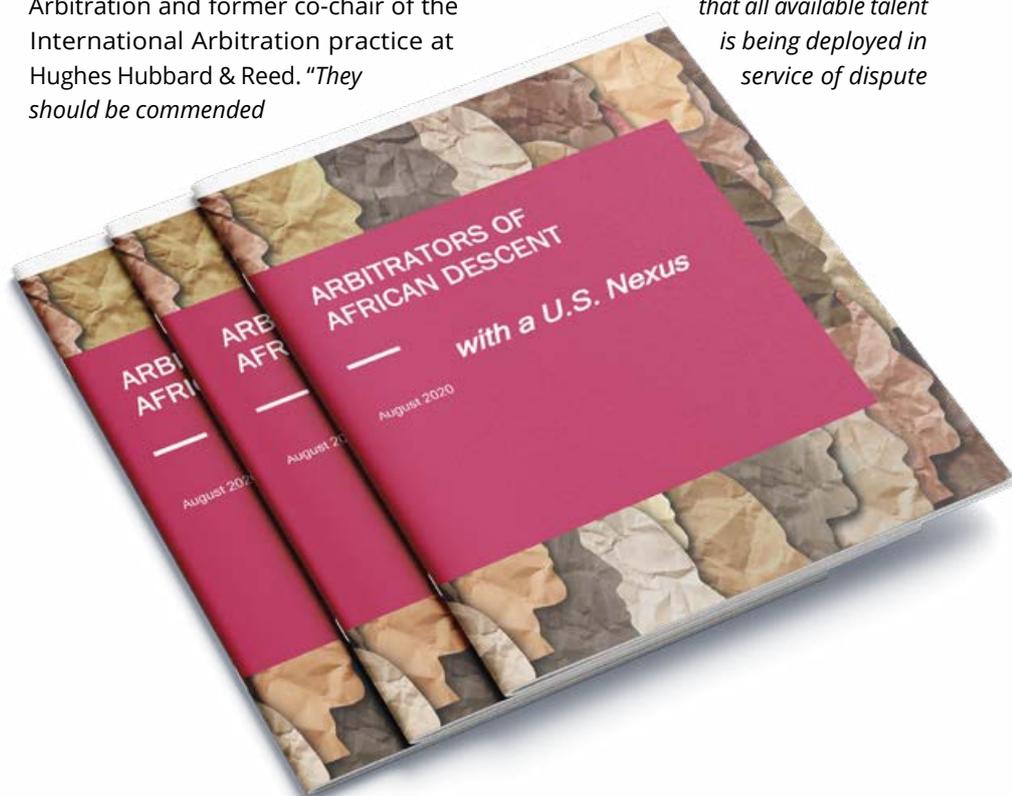
“*It is easy for all of us to pay lip-service to ideals of inclusion and equity, but by putting together this list of highly-qualified arbitrators, Katherine Simpson and Nancy M. Thevenin have done something concrete to promote those ideals in our community,*” commented **John Fellas**, an independent arbitrator at Fellas Arbitration and former co-chair of the International Arbitration practice at Hughes Hubbard & Reed. “*They should be commended*

for producing a resource that all participants in the field of international arbitration – be they clients, law firms, institutions or arbitrators – can and should consult to ensure a more diverse pool of potential arbitrators.”

“*I am so honoured to be on this comprehensive list of arbitration practitioners of African descent, and particularly with such talented women, as part of an initiative spearheaded by women,*” commented *ArbitralWomen* member **Mélida Hodgson**, head of Jenner & Block’s international arbitration practice in New York and Vice Chair of the ICC Institute of World Business Law.

The New List is showing itself to be an important tool to move the arbitration community towards greater inclusivity. Since its publication, the International Institute for Conflict Prevention and Resolution (“CPR”) has invited from the New List, among others, *ArbitralWomen* members **Vivian Zimba** and **Eunice Shang-Simpson** to join CPR’s Panel of Distinguished Neutrals. “*There have been a number of perceived obstacles to selecting people of color as neutrals in arbitrations. The New List takes aim at one of those, and provides ready access to talented arbitrators to better ensure*

that all available talent is being deployed in service of dispute



resolution. As noted, at CPR we have invited a number of the neutrals on the New List to join CPR's Panel of Distinguished Neutrals," observed **Allen Waxman**, President & CEO of CPR.

"The list is highly commendable... because it highlights the assertion that there are satisfactory numbers of qualified arbitrators of African descent within the arbitration space", commented **Ijeoma Ononogbu**, a London-based solicitor, founder of ADR consultancy Dispute Resolver, and co-chair of the Africa Interest Group at the America Society of International Law. "Arbitrators who continuously raise the bar both within the African continent and in other jurisdictions, especially America, and have chosen to define their career destination intentionally."

ArbitralWomen Board Member Rose Rameau, Founding Partner of RAMEAU INTERNATIONAL LAW in Washington D.C. and recent nominee to the Permanent Court of Arbitration in the Hague, commented: "Publishing a list of black arbitrators provides needed visibility. It scratches the surface of actions required to resolve the conscious and unconscious biases in the field of international arbitration. There are highly qualified, hard-working, brilliant black arbitrators and arbitration lawyers: this List proves we are here, now hire us. Appoint us."

"In the nearly 40 years I have been in this field, there has never been a problem of talented people of African descent being unavailable. There has been a problem of them being hired and promoted in the large international arbitration practice groups and institutions or named as arbitrators by parties and institutions," commented Professor **Ben Davis**. "And the reasons for that have nothing to do with their ability and everything to do with too many people's inability to get past their ethnocentrism in an arena that, without irony, is based on a person's capacity to do cultural gymnastics."

One of the key benefits of international arbitration is its promise and proven ability to enable different people from different countries and different systems, with different backgrounds, to resolve disputes and even create harmony. It is indeed odd that gender parity and ethnic equity are not already

reflected in arbitrator rosters.

"There is growing recognition that in order to maintain trust in the process and its outcomes, the decision-makers in our multi-cultural, multi-state international arbitration system of dispute resolution must reflect its users," said ArbitralWomen member **Edna Sussman**, who serves as the chair of the New York International Arbitration Center (NYIAC) and as a director of the AAA/ICDR. "This New List is a signally important contribution to the broad effort that is being made by the arbitration community to increase diversity not only as a matter of fundamental fairness but also in order to maintain and even foster greater acceptance of arbitration as a dispute resolution mechanism of choice."

"The New List demonstrates that there is no shortage of highly qualified, talented people of African descent in the international dispute resolution space. It also facilitates the demand for greater diversity in this area of practice, which is entirely within reach" commented ArbitralWomen member **Eunice Shang-Simpson**. "The New List is also a helpful reminder to reflect on the progress we have made towards diversity within our respective institutions, and of the potential for going further. Inclusion on rosters or panels is important but increasing participation through direct appointments is key."

Prof. Homer C. La Rue of Howard University, states "I think that one of the most important challenges facing the ADR community is that of making diversity meaningful by taking steps to select diverse neutrals (particularly persons of color and women) as arbitrators and mediators." Prof. La Rue is currently Vice President of the National Academy of Arbitrators ("NAA"). He has created the **Ray Corollary Initiative** , which is a program to address unconscious bias in the selection of arbitrators and mediators and which aims for both gender and ethnic diversity in arbitrator appointments.

Nancy M. Thevenin, also a founding member of ArbitralWomen, highlighted that the New List "allows an overlooked group to be seen and for those on the list to see each other". Although the New List is not an organization and does not replace the important work that organizations do to promote diversity, community is developing within.

ArbitralWomen member **Tina Patterson** Principal at Jade Solutions, LLC stated, "It was heart-warming to attend the first getting-to-know-you webinar for individuals featured in the Arbitrators of African Descent with a U.S. Nexus List, and to see arbitrators from around the world present. The New List has been a fantastic resource to identify potential collaborators, speakers, and teaming partners for projects."

"The Arbitrators of African Descent List features dynamic and accomplished professionals in the international ADR community. This curated List has made diverse neutrals visible and top of mind to practitioners and arbitral institutions, to increase appointments and recruit neutrals of African Descent. The list, accompanied by an arbitration inclusion clause will expand the featured neutrals' appointment opportunities," remarked **Joanne Saint-Louis**, JAMS Diversity Program Manager. JAMS Neutrals featured on the New List include **Hugh L. Fraser**, **Gail S. Tusan**, and **James Ware**.

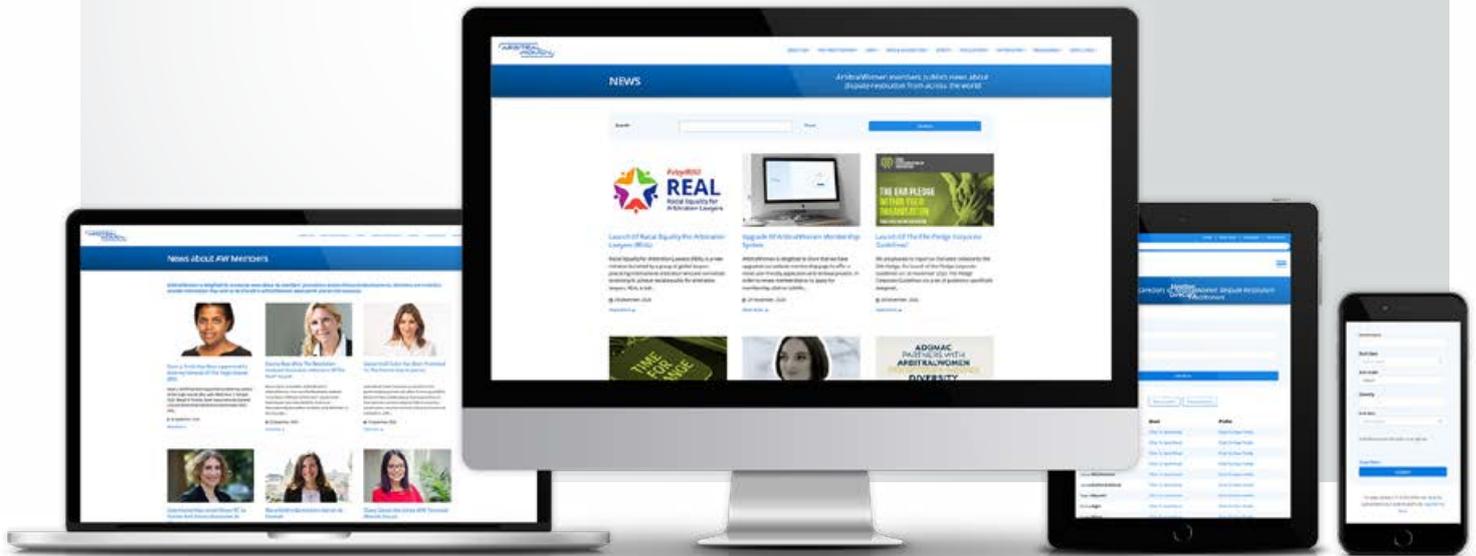
"I fully support this project and its identification of highly qualified ADR Professionals of African Descent! This project espouses truth and debunks a falsehood. Its existence is a source of wise guidance and sage advice, and no doubt encourages others to do more of what is good and positive, and less of what is hurtful, harmful and divisive," said **James R. Jenkins**, Chairman of the AAA-ICDR Foundation Board, speaking on his own behalf. "ADR Professionals of African Descent have a distinct perspective and grasp of the interpersonal, which is in part influenced by the fact that they are surviving and often thriving in a world flawed by proponents of primitive tribalism, cult, single issue orientation, political affiliation, bias, prejudice or default opinion based on race, and unequal access to justice and opportunity. This important perspective is embodied in dispute resolution processes where People of African Descent preside. Inclusion of People of African Descent will enable ADR to live up to its promise of neutrality, care, empathy and compassion, in action."



The New List is available online.

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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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diego@smartfrog.com.br

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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.



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