



Participants at the AW-YAWP SpeedNet event in Paris on 15 October 2019

## This edition of the Newsletter is dedicated to reports by ArbitralWomen members on dispute resolution events in September and October 2019

**ArbitralWomen members have reported on a** wide array of international dispute resolution events that took place between September and October 2019. These events were held in disparate parts of the globe — including Austria, Bosnia & Herzegovina, Brazil, Costa Rica, Croatia, China, the Czech Republic, England, France, Georgia, Germany, India, Italy, the Netherlands, Russia, South Korea, Spain, Turkey, Ukraine and the United States.

These reports cover some highlights of the IBA Annual Conference and related events in Seoul in September 2019. We also report on several events organised by ArbitralWomen, including an ArbitralWomen SpeedNet in London on 1

October 2019, an ArbitralWomen-YAWP Speednet in Paris on 15 October 2019, and the ArbitralWomen Challenge: New Ways to Challenge Diversity that took place in Hong Kong on 21 October 2019.

We thank the many ArbitralWomen members who have submitted these reports. These contributions make it possible for us to share widely information about international dispute resolution events taking place around the world and feature the role of ArbitralWomen members.

Dana MacGrath, Bentham IMF  
ArbitralWomen President

# Reports on Events

## DIS40 Rise & Shine with Arbitration Workshop No.3: Tribunal Secretary—Tasks, Duties and its Role in the Arbitration Proceedings, 5 September 2019, Munich, Germany



Left to Right: Alexander Shachavelev, Julia Klesse, Susanne Schwalb, Nadine Lederer, Christian Stretz, Maïke Michels

**Rise and shine with Arbitration!** As part of the series of morning workshops organized by the Munich chapter of the Initiative of Young Arbitrators of the German Arbitration Institute (DIS40), GLNS Rechtsanwälte Steuerberater hosted a round-table discussion on the tasks, duties and role of tribunal secretaries in international arbitration on 5 September 2019. The discussion was led by **Susanne Schwalb**, Counsel at CMS Hasche Sigle in Munich and **Alexander Shchavelev**, Associate at Pinsent Masons in Munich, both of whom have long-standing experience in supporting international commercial and investment arbitrations as tribunal secretaries. The workshop was organized by **Nadine Lederer**, Senior Associate at Hogan Lovells in Munich and **Christian Stretz**, Attorney at Ego Humrich Wyen in Munich, DIS40 regional co-chairs for Munich.

The host **Julia Klesse**, Associate at GLNS, opened the event with a short wel-

come-address followed by a presentation of the speakers by Nadine Lederer and Christian Stretz.

Susanne Schwalb gave an introduction into the topic and the relevance of tribunal secretaries, with a summary of the well-known arbitration proceeding of Yukos Universal Ltd. (et al.) v. The Russian Federation where (following ten years of arbitration proceedings) the arbitral award was challenged, inter alia, on the grounds that the tribunal secretary had overstepped his role and become a “fourth arbitrator”. The main arguments for this view were that the tribunal secretary had invoiced a significantly higher number of working hours than the arbitrators whereby the content of the work could not be clarified. Furthermore, the tribunal secretary had advanced from an associate to a partner in his law firm during the proceedings and had started to act as arbitrator himself in other cases. In the opinion of Susanne Schwalb and Alexander Shchavelev, the case gives a

good example of the difficulties and risks that may arise in connection with the engagement of a tribunal secretary. While both speakers confirmed that any arbitration proceeding undisputedly benefits from the engagement of a tribunal secretary in terms of efficiency, both also confirmed that the exact scope of the tasks of the tribunal secretary remains largely unregulated and is often non-transparent.

Against this background Alexander Shchavelev gave an overview of the tasks he was regularly assigned to as a tribunal secretary and alerted participants to pitfalls that they should ensure to avoid, most relevantly the impression that arbitrators delegate decision-making functions to the tribunal secretary. Susanne Schwalb emphasized that the engagement of a tribunal secretary should be organized in a transparent way, whereby the tasks of the tribunal secretary are to be defined in consultation with the parties. In this context, Susanne Schwalb referred to the Young ICCA Guidelines on Arbitral Secretaries which offer guidance in the process of engaging and defining the tasks of a tribunal secretary. She concluded, however, that there is often a discrepancy between the tasks of a tribunal secretary as provided for in notes issued by international arbitral institutions and the tasks that are in fact assigned to tribunal secretaries. Both speakers argued for a more realistic approach in the relevant rules and regulations. At the end, the participants shared their experiences and views on tribunal secretaries, and a fruitful round-table discussion completed the workshop.

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Submitted by Julia Klesse and Maïke Michels, Associates at GLNS Rechtsanwälte Steuerberater Partnerschaft mbB in Munich

## Gender Diversity in Führungspositionen. Sonntagsreden und Realität in der Europäischen Union, 9 September 2019, Vienna, Austria



Left to Right: Heike Mensi-Klarbach, Melanie Eckl-Kerber, Günther Horvath, Judith Knieper, Herbert Cordt, Maria Pernegger, Paul Oberhammer

As this discussion confirmed, when it comes to equal representation of men and women in top positions, nothing should be taken for granted yet. Whilst **Mariana Kühnel** reported on the challenges young women are (still) facing when taking on management positions within the Austrian Chamber of Commerce, a comprehensive keynote delivered by **Prof. Daniela Bankier** and an intro-

duction on where we stand on gender diversity in arbitration shared by **Lisa Beisteiner** set the ground for a general panel discussion. This truly controversial discussion was moderated by **Judith Knieper** (UNCITRAL) and comprised **Heike Mensi-Klarbach** (WU, Economic University Vienna), **Melanie Eckl-Kerber (IV, Industriellenvereinigung)**, **Herbert Cordt (RHI Magnesita)**, **Paul Oberhammer** (University of Vienna),

**Maria Pernegger** (Media Affairs) and **Günther Horvath** (VIAC). It was kicked-off by a disturbing yet diverting presentation on the (in)visibility of women in media (see [here](#) for a summary) and some of the hotly debated issues included: Is gender diversity a question of the past which we can tick off already to move on to other, seemingly more important questions of diversity (as e.g. ethnical or geographical diversity)? Are businesses doing enough already (should they e.g. adopt an equivalent to the Equal Representation in Arbitration Pledge)? Should women adopt “male” communication styles and habits (which may not always mean playing by the rules) in order to succeed or should adaptation go the other way? The debate sparked lively reactions from the floor and was continued over drinks.

Submitted by Lisa Beisteiner, ArbitralWomen member, Partner, zeiler.partners, Vienna, Austria

## DIS Autumn Conference 2019: Third Party Funding — Short-term hype or more? 10-11 September 2019, Berlin, Germany

**The German Arbitration Institute's (DIS) Autumn Conference** was held in Berlin on 11 September 2019, on the theme: “*Third-Party Funding – Short-term hype or more?*”. The conference saw participation from a number of ArbitralWomen members. The conference began with a welcome address by **Prof. Herbert Kronke**, Chairman, DIS, where he spoke about the meteoric rise of third-party funding (TPF) in international arbitration in recent times. The welcome address was moderated by

**Ulrike Gantenberg**, Partner, Heuking Kühn Lüer Wojtek, Düsseldorf, who brought her own insights into the various challenges that accompanied the rise of TPF in international arbitration and how the arbitration community must collectively respond to them, and guided the 200 conference delegates through the four panels. For full information regarding the program, please click the button at the end of this report.

The first panel was on the topic of “Demystifying Third-Party Funding”. The

panel included AW Member **Sarah Ganz**, Counsel, WilmerHale, London. The panellists spoke at length about what TPF in international arbitration at its core entailed and the reasons for its growth in recent times. They also highlighted some of the common myths and misconceptions surrounding TPF in international arbitration, elaborating on the need to dispel many of these notions among regulators and practitioners alike.

The second panel, on the topic: “The regulatory framework for TPF and re-



Left to Right: Dirk Knottenbelt, Marina Weiss, Kim Rooney, Alice Broichmann, Carl Persson, and Theo Paeffgen.

gional perspectives”, was moderated by AW Member **Alice Broichmann**, Counsel, Allen & Overy, Munich. AW Member **Marina Weiss**, Counsel, Bredin Prat, Paris participated as one of the panellists and specifically discussed the structure of TPF regulation in France, a major hub for international arbitration. This panel further shed light on some of the regulatory efforts across the world directed at TPF in arbitration, including recent legislative changes in Hong Kong and Germany. While not all jurisdictions had adopted specific legislations or regulations governing TPF in arbitration, the panellists emphasized that in many of

these countries, existing laws, particularly those governing TPF in litigation could be applicable to arbitration as well. The panel also touched upon some of the efforts made by arbitral institutions such as ICSID to regulate TPF through institutional rules, including the all-important question of disclosure of such funding.

The third panel, entitled: “The unusual suspects”, saw participation from members of finance firms, litigation and arbitration financiers, insurance brokers and arbitral institutions, ensuring that a diverse set of perspectives towards TPF from various stakeholders were brought to the table.

The fourth and final panel discussed the question: “Is TPF changing the arbitration process as we know it?”. AW Member **Marie Danis**, Partner, August Debouzy, Paris was one of the panellists. The panellists highlighted that while in many ways TPF had brought about a number of significant changes in the arbitration landscape, it must not be viewed as a hostile development or one that must be prohibited altogether. Instead, it is important to ensure that all conversations about regulating TPF, whether in the commercial or investment context, take place in an open, transparent and solution-driven manner.

The conference concluded with the overwhelming consensus among all the participants that TPF was here to stay; hence, the question was how to regulate and respond to its growing influence in international arbitration.



Submitted by **Marina Weiss**, ArbitralWomen member, Counsel, Bredin Prat, Paris, France

## Infrastructure Disputes: What the Future Holds for Us, 12 September 2019, London, UK

### The Dispute Appointment

Service of the Chartered Institute of Arbitrators (CIArb) and Deloitte LLP organised a discussion on the future of infrastructure disputes. The conversation addressed a plethora of new challenges and opportunities in the field, such as issues of dispute resolution, including ADR and avoidance, the participation of state-owned entities, funding and operations, risk management issues, sustainability and technology.

The event consisted of two panel discussions led by leading lawyers and commercial experts. Moderating the Panel, **Olena Gulyanytska** FCIArb



Left to right: Nicholas Gould, Matthew Smith, Nita Mistry, Rebecca Shorter and Olena Gulyanytska

first introduced the importance of being a member of ArbitralWomen to advance the interests of female practitioners and promote women and diversity in international dispute resolution, before giving the floor to the distinguished Panel.

**Olena Gulyanytska** FCIArb, Head of Dispute Appointment Service at CIArb, and **Nita Mistry**, Senior Associate at K&L Gates, both ArbitralWomen, participated on the legal panel. Their presentations fo-

cused on the complex legal issues that come part and parcel with construction and infrastructure disputes.

Nita Mistry eloquently navigated the intricacies of arbitral proceedings as they arise in the resolution of large infrastructure investments. Targeting the issues inherent to legal project management in mega project arbitrations where the large team of lawyers, experts, factual witnesses and stakeholders require channels of communication to be effectively coordinated.

Illustrating the complexity of mega project dispute resolution, Nita indicated how each company with a co-venture interest in the project must be understood and taken into account. Nita touched on the impact co-ordination, communication and decision-making amongst the co-venturers may have on the arbitration proceeding, particularly in mega project arbitrations.

Nita also addressed the importance of considering the appropriateness of bifurcation of the arbitration

proceedings in mega project arbitrations, i.e. dividing the arbitral proceedings into at least two parts, for example, by separating jurisdiction and merits and then merits into questions of liability and quantum and / or splitting issues according to the parties involved and / or by particular issues.

The presentation given by Olena Gulyanytska FCI Arb highlighted the growing use of Dispute Avoidance Boards (DABs) and Conflict Avoidance Boards (CABs) in domestic and international construction disputes. As a simple introduction to DABs, Olena defined the process of dispute resolution as panels of neutral practitioners with certain specialisations and/or qualifications, which provide ongoing support to constructive services throughout the duration of the project. The discussion showcased the true potential of DABs to avoid disputes rather than settle any problems that have arisen after the event.

The key features of the CI Arb Dispute Avoidance Board Rules 2014 were also analysed to give construction professionals an insight into how the law regulates

the process. As part of her discussion relating to the effectiveness of CABs, Olena highlighted promising statistics which demonstrate 60% of projects using CABs had no disputes and 98% of disputes referred to a CAB did not reach litigation or arbitration.

Finally, in her discussion of what trends are visible in construction disputes, Olena predicted a future rise in the use of dispute avoidance mechanisms and an increasing number of services becoming available to facilitate this such as CI Arb Early Neutral Evaluations, CI Arb DABs and CI Arb CABs.

If you would like to find out more about the event please click the button below.



Click here to view the interviews.

Submitted by Olena Gulyanytska, Head of Dispute Appointment Service, CI Arb

## Kyiv Arbitration Days 2019: Think Big! 13 September 2019, Kyiv, Ukraine

On 13 September 2019, Kyiv hosted its annual conference "Kyiv Arbitration Days 2019: Think Big!"

This year's keynote speaker, **Alice Fremuth-Wolf**, Secretary General of the Vienna International Arbitral Centre, delivered a speech on diversity in arbitration. While noting that the door is now open more widely to talented women to take their place in the world of international arbitration, she emphasised that there still remain unconscious biases against appointing female arbitrators. In conclusion, she urged all stakeholders to fight their unconscious biases and be mindful of diversity in their practice.

The first panel moderated by **Denis Lysenko**, Partner at Aequo (Ukraine), was dedicated to the Rules on the Efficient Conduct of Proceedings in International Arbitration (also known



Left to Right: Arne Fuchs, Kristen Young, Jennifer Younan and Laura Hardin

as the Prague Rules) and other soft law instruments. The panellists (**Thomas Williams**, Partner at Sultan Al-Abdulla & Partners (Qatar), **Daniel Greineder**, Partner at Peter & Partners (Switzerland)

and **James Castello**, Partner at King & Spalding (France)) discussed the main features of the Prague Rules, such as limited document production and a more proactive tribunal. In addition, the pan-

ellists considered whether the Prague Rules could become a real alternative to the IBA Rules on the Taking of Evidence in International Arbitration.

Mediation was the topic of the second panel. The panelists (**Sharon S M Ong**, Policy Advisor Director at the Ministry of Law (Singapore), **Heidi Merikalla-Teir**, Managing Partner at Merilampi (Finland) and **Alexander Scard**, Senior Associate at Kennedys (United Kingdom)) discussed the benefits of mediation and whether the United Nation Convention on International Settlement Agreements Resulting from Mediation (also known as the Singapore Convention on Mediation) could repeat the success of the New York Convention on the Recognition and Enforcement of Arbitral Awards.

Given the significant interest of arbitration practitioners in Naftogaz's arbitrations against Gazprom, the Organising

Committee of the Kyiv Arbitration Days also organised a session with **Andriy Kobolyev**, CEO at Naftogaz (Ukraine). Mr Kobolev's presentation was followed by a Q&A session moderated by **Markiyani Kliuchkovskiy**, Partner at Asters (Ukraine).

The third panel (constituted of **Nikolaus Pitkowitz**, Partner at Graf & Pitkowitz (Austria), **Veronika Korom**, Assistant Professor at ESSEC Business School (France), **Jonathan Gimblett**, Partner at Covington & Burling LLP (USA) and moderated by **Ziva Filipic**, Managing Counsel at the ICC International Court of Arbitration (France)) was on the topic of cybersecurity. Among the things discussed were the expectation of confidentiality, technological risks, trustworthiness of evidence and hacking.

The panel on ethics in investment arbitration was moderated by **Arne Fuchs**, Partner at McDermott Will & Emery

(Germany). **Kristen Young**, Partner at White & Case (USA) talked about the key ethical obligations of arbitrators, such as independence and impartiality. **Jennifer Younan**, Partner at Shearman & Sterling (France) discussed the issue of sanctions in international arbitration, while **Laura Hardin**, Managing Director at Alvarez & Marsal (USA) talked about independence and enforcing standards of ethics on experts.

This year's presentations may be found at the official website of the event:



Submitted by Mariia Tsarova, ArbitralWomen member, Associate, Shearman & Sterling, Paris, France  
Pictures courtesy of Ukrainian Bar Association

## XI ABA Conference of the Resolution of CIS-Related Business Disputes, 18 September 2019, Moscow, Russia

Now in its 11<sup>th</sup> year, this practice-oriented conference addressed the latest developments in Commonwealth of Independent States (CIS)-related business and investment dispute resolution. The Conference was well attended, with registrants from Austria, the BVI, China, Cyprus, France, Germany, Hong Kong, Japan, Kazakhstan, Netherlands, Russia, Sweden, Switzerland, the UK, and the US.

**Laura Hardin**, Managing Director, Alvarez & Marsal, Houston, Texas and **Lisa M. Richman**, Partner, McDermott Will & Emery, Washington DC presented at the roundtable "Forethought spares afterthought: maximizing return on pre and post-award interest, costs, and other 'non-core' components of arbitration damages." Their interactive role-play un-tangled difficult damages concepts and costs strategies, and kept the audience entertained. **Olga Boltenko**, Fangda Partners, Hong



Left to right: Dmitry Marenkov, Katherine Simpson, Shirin Saif, Dominic Pellew

Kong also presented on the panel.

**Kathleen Paisley**, Partner, Ambos Lawyers, Antwerp, Belgium and **Elena Mazetova**, Petrol Chilikov, Moscow, Russia presented on the panel entitled "Straight from the source: Obtaining 'private' information from reluctant third parties."

After the lunch break, **Dr. Anna Kozmenko**, Partner, Schellenberg

Wittmer Ltd. Zurich, Switzerland, moderated a panel entitled "The future of investor state dispute settlement: CIS perspectives." Audience members learned about the latest developments, including the future of the Energy Charter Treaty following Achmea and the CIS approach to the new generation of investment treaties. **Olga Tsvetkova**,

Head of International Litigation and Arbitration at the Russian Ministry of Justice, Moscow, Russia also presented on the panel.

**Dr. Katherine Simpson**, Arbitrator with 33 Bedford Row Chambers (London) and Simpson Dispute Resolution (US), moderated a panel entitled “The role of the secretary to the tribunal: fourth arbitrator or support staff?” The audience learned about challenging an Award based on a fourth arbitrator theory from **Shirin Saif**, Senior Associate, Roschier, Stockholm, Sweden. In response, Dr. Simpson noted the difficulty of such a claim, i.e. that (1) arbitrators enjoy making their own decisions and are unlikely willing to delegate the task, and (2) arbitrators have a rational economic interest in not permitting a Secretary to overstep: after all, at each hearing and during each deliberation, arbitrators are on a performance-based interview for their next position.

**Huawei Sun** of Zhong Lun, Beijing, China presented as part of the “Making your case: Practical tips on oral presentation and advocacy” panel. Building on the prior year

panel’s “soft skills” session, this panel provided valuable, cross cultural advice about case presentation – with prizes for audience participation!

**Tatiana Minaeva**, Partner, Reynolds Porter Chamberlain, London, UK presented on the “Bifurcation in international arbitration” panel. The panel discussed when bifurcation is useful and presented the tactical considerations for counsel and the due process and efficiency considerations for neutrals.

**Nastya Malygina**, PricewaterhouseCoopers LLP, London, UK presented as part of the “So you ‘won’ your case, now what do you have to show for it?” panel, which urged practitioners to give due regard to damages arguments already at the beginning of their cases.

**Maria Gritsenko**, Associate General Counsel–Litigation, VEON, London, UK, presented on the panel “Game of Venues: An ongoing tale featuring tumult beyond the Narrow Sea, the rise of dragons, and upstart challengers for the throne.”

**Aisha Manapova**, Assistant Registrar, International Arbitration Centre, Nur-Sultan, Kazakhstan presented on the panel “What’s happening in Kazakhstan?”

**Oksana Wright**, Fox Rothschild LLP, New York, USA presented on the “The evolving landscape of legal privilege and disclosure obligations” panel.

The social program that accompanied the Conference was valuable and helped participants from Austria, the BVI, China, Cyprus, France, Germany, Hong Kong, Japan, Kazakhstan, the Netherlands, Sweden, Switzerland, the UK, and the US to learn from (and about) one another. This American Bar Association conference was co-organized by the Russian Arbitration Association, which sought to (and, in my mind, succeeded in) introducing guests to the best of Russian hospitality and cuisine. Through this and the panels, one left the conference more competent in the business, legal, and cultural aspects of CIS-related business disputes.

Submitted by Dr. Katherine Simpson, Arbitrator, 33 Bedford Row Chambers, London, U.K. and Simpson Dispute Resolution (US) and Dr. Anna Kozmenko, Partner, Schellenberg Wittmer Ltd. Zurich, Switzerland

## California Women Lawyers 2019 Annual Conference “Rise–Lifting as We Climb” 19–20 September, 2019, Sacramento, California, USA

**At the California Women Lawyers’ (“CWL”) Annual Conference** on 20 September 2019, entitled “Lifting as We Climb,” ArbitralWomen member, **Ruth V. Glick**, Independent Arbitrator and Mediator associated with the American Arbitration Association/ICDR, was part of a panel including the Hon. **Louise LaMothe**, U.S. Magistrate Judge, Central District of California and Arbitrator and Mediator, **Tamara Lopez**, JAMS Mediator and Arbitrator, and **Neda Mansoorian**, Principal, Mansoorian Law P.C., discussing the challenges of Women in ADR.

In the United States today, 50% of law school graduates are women



Left to Right: The Hon. Louise LaMothe, Ruth V. Glick, Tamara Lopez and Neda Mansoorian

and between 25% and 33% of state and federal judges are women. Yet, women comprise only 20-25% of domestic and international arbitration appointments and are selected even less frequently for large commercial and employment mediations. Even with the Equal Participation in Arbitration Pledge, supported by ArbitralWomen, the number of women selected to serve in large cases is disproportionately fewer than the availability of qualified women neutrals.

The panel discussed the challenges they have faced and how they have overcome them.

Ruth Glick described the origin of the American Bar Association's Women in Dispute Resolution (WIDR), when she was Chair of the Dispute Resolution Section,

and how it raised the consciousness of at least two major ADR providers, the American Arbitration Association and JAMS, who now regularly insure that lists of neutrals sent to parties contain several women neutrals. Other panelists discussed how women can help other women. An increasing number of litigators and corporate counsel are now women and can and must demand that greater numbers of qualified women arbitrators and mediators be made available to them on ADR rosters, and then must make the commitment to actually select them.

Diversifying ADR is an ongoing challenge. See "Where are the Women Arbitrators? The Battle to Diversify ADR", published by the ABA Commission on Women in the Profession.

Unconscious implicit bias as a factor influencing arbitrator and mediator selection was also addressed by the panel. Both speakers and audience were in agreement that the subject of greater participation of women in ADR must remain in the limelight, and those with the ability to do so must demand that more women be considered as neutrals for their cases.

 **Where are the Women Arbitrators? The Battle to Diversify ADR.**

Submitted by Ruth V. Glick, ArbitralWomen member, Arbitrator, Mediator, Attorney at Law, Burlingame, CA, USA

## FTI Consulting's Women's Initiative (WIN) cocktail, 19 September 2019, Paris, France



Left to right: Sarah Ourhamoune, Anna Adlewska and Juliette Fortin

2016 Games, but rather establishing herself as a respected player in a typically male dominated field. She also discussed with the audience how she managed to find balance between her private and professional life and her experience managing doubts and stress when facing professional challenges.

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

### On Thursday, 19 September

2019, FTI Consulting's Women Initiatives hosted what is now an annual *rendez-vous* dedicated to its network of female clients, and arbitration and litigation practitioners. The event was held at the Raphaël hotel, in Paris. Attendees were welcomed by **Juliette Fortin**, member of the Board of ArbitralWomen and head of FTI Consulting's dispute team in Paris,

### Anna Adlewska and Stéphanie Lhomme.

After a short rooftop drinks reception, with one of the most incredible views of Paris, **Sarah Ourhamoune**, boxing world champion and vice champion at Rio 2016, addressed the audience on her personal experience challenging stereotypes. She explained that her most important challenge was not preparing technically for the



## 8<sup>th</sup> Asia Pacific ADR Conference, 20 September 2019, Seoul, South Korea



Left to Right: Janet Walker, Carita Wallgren-Lindholm, Michael Lee, Siegfried H. Elsing, Kap-You (Kevin) Kim

**Kap-You (Kevin) Kim**, senior partner at Bae, Kim & Lee LLC, under the heading: “Civil v. Common Law Revisited in the context of ensuring legitimacy and delivering efficiency,” **Siegfried H. Elsing**, partner at Orrick Henington & Sutcliffe LLP, presented an overview of the topic, including of the Gangnam principles, born locally. Other panellists included **Janet Walker**, independent arbitrator at Arbitration Place & Outer Temple Chambers, **Carita Wallgren-Lindholm**, international arbitrator from Finland and **Michael Lee**, arbitrator, 20 Essex Street Chambers.

Submitted by Carita Wallgren-Lindholm, ArbitralWomen member, international arbitrator from Helsinki, Finland

**During the 2019 Seoul ADR Festival**, the 8<sup>th</sup> Asia Pacific ADR Conference was held, entitled: “Ensuring legitimacy, Delivering Efficiency: Procedural Trends and Potential Reforms

in Dispute Resolution”, highlighting important aspects of the need for balance between ensuring legitimacy and delivering efficiency in international dispute resolution. On a panel moderated by

## Roundtable on the law and practice of international arbitration, 20 September 2019, Paris, France

**On 20 September 2019**, the LL.M Business Law, Arab World and Middle East of Sorbonne Law School held an event (in French) on the law and evolving practice of international arbitration in France. Sorbonne Law School wishes to express its gratitude to **Pr. François Ameli**, Head of the LL.M Business Law, Arab World and Middle East, and to the Chartered Institute of Arbitrators for sponsoring the networking cocktail reception.

**Philippe Delebecque** (Sorbonne Law School), President of the Paris Chamber of Maritime Arbitration, moderated the sessions in an enthusiastic way by raising insightful questions and providing the audience with valuable reminders of the key issues raised by each speaker.

**Amel Makhlouf** (Sorbonne Law School / CIArb) gave an opening address on the practice of third-party funding (TPF) whereby a funder (a financial institution, an investment fund or an insurance company) provides financial support to a claimant



Left to right, (first row) Philippe Delebecque, François Ameli, Amel Makhlouf, Chiraz Abid, Olena Gulyanytska, Joséphine Hage Chahine; (second row) Paul Giraud, Alexis Foucard

to cover part or all of the cost of its expenses, in return for a share of damages

if the claim is successful. Dr. Makhlouf described the use of this practice in

both litigation and arbitration, mainly developed in common law jurisdictions from the 1990s (Australia, the United States, the United Kingdom, New Zealand) and to a more limited extent in civil law jurisdictions (Germany, Austria, Switzerland). After presenting the main benefits and disadvantages of TPF, Dr Makhlouf exposed its recent developments in France. Ultimately, Dr Makhlouf addressed the potential risks and legal issues raised by TPF under the French legal framework, notably its compatibility with the rules of ethics that all lawyers practicing in France shall at all times follow in fulfilling their professional responsibilities.

Then, **Paul Giraud** (Université de Picardie Jules Verne) discussed the reasoning of arbitral awards under French law. Pr Giraud first explained the significance of this notion involving all the actors of the proceeding (arbitrators, counsel, parties, the arbitral institution and the annulment judge), before specifying its legal implications regarding the ground for annulment for lack of reasoning in domestic arbitration (article 1492 6°, French Code of Civil Procedure), the arbitrator's compliance with his/her mission, the parties' right of reply and the international or procedural public policy. Throughout his presentation, Pr Giraud invited the audience to assess the mission of the annulment judge in relation to the reasoning of arbitral awards,

referring to several decisions rendered by the Paris Court of Appeal.

The reflexion was taken forward with **Joséphine Hage Chahine** (Sorbonne Law School / Leboulanger & Associés) discussing the parties' ability to opt out of annulment review through a waiver clause. Dr Hage Chahine addressed the validity requirements of such clause, described circumstances under which it might be considered pathological and distinguished between curable and incurable pathological clauses. Subsequently, Dr Hage Chahine enumerated various techniques based on the French law of contracts to resolve such pathology, referring notably to the principle of good faith in the performance of the contract and to contract interpretation guidelines.

**Alexis Foucard** (Clifford Chance LLP) engaged in an interesting discussion questioning the growing importance of compliance standards in international arbitration and how arbitrators may be subject to increasing scrutiny from state courts in the presence of red flags. Referring to situations where a party relies on breaches of compliance standards, Mr Foucard discussed the relevance of the red flags method with some concrete examples taken from French law. Mr Foucard also invited the audience to question the respective missions of the annulment judge and the arbitrator, together with their responsibilities in fostering a transnational culture of compliance.

As the fifth speaker, **Chiraz Abid**

(Altana) discussed the issue of ascertaining the content of the applicable law on the merits in international arbitration. After a critical review of the current methods of establishment of the applicable law, Dr Abid concluded that many difficulties are still encountered, especially regarding the use of legal expertise and administrative secretaries, which might reduce the efficiency and the celerity expected by the parties from the arbitration process. Finally, Dr Abid expanded the discussion on new devices to be potentially implemented in the arbitration field.

To conclude, **Olena Gulyanytska** (CIArb) discussed with the audience on anti-suit injunctions restraining a party from instituting or continuing the proceedings in foreign courts. In her view, anti-suit injunctions often attract undue criticism in civil law systems such as France. Though those injunctions are frequently seen as an offensive tool, Ms Gulyanytska sought to underline the benefits of such discretionary remedy granted by English courts, illustrated by various decisions.

The conference was followed by a networking cocktail reception providing an opportunity to exchange further on the new challenges and arbitration trends in France.

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Submitted by Dr. Amel Makhlouf, ArbitralWomen Member, CIArb / Lecturer in Law, Sorbonne Law School

## IBA Arb40 Workshop: arbitrator challenges and conflicts of interest, 22 September 2019, Seoul, South Korea

**Ahead of the International Bar Association (IBA) Annual Conference, Seoul 2019**, the IBA Arb40 Subcommittee organised a workshop in Seoul for younger members of the arbitration community. This year's topic was arbitrator challenges and conflicts of interest.

The workshop opened with **André de A. Cavalcanti Abbud**, Partner at BMA Advogados, São Paulo and Co-Chair of

the IBA Arb40 Subcommittee delivering welcoming remarks.

**Julie Bédard**, Partner at Skadden, Arps, Slate, Meagher & Flom, New York and Co-Chair of the IBA Arbitration Committee, then delivered a keynote speech at the workshop. She addressed the continuing relevance of the revised IBA Guidelines on Conflicts of Interest in International Arbitration in resolv-

ing challenges to arbitrators for alleged conflicts of interest, and discussed the potential for various developments in arbitration, such as third-party funding and the use of social media for professional networking, to give rise to new grounds for arbitrator challenges.

The first panel explored the theoretical framework on challenges and conflicts of interest across different



Left to Right: Ana Serra e Moura, Arie Eernisse, Jennifer Lim



left to right: Shreyas Jayasimha, Hamid Abdulkareem, Karen Yoo

eral at the ICC International Court of Arbitration, Paris, **Arie C. Eernisse**, Foreign Attorney at Shin & Kim, Seoul, and **Jennifer Lim**, Registered Foreign Lawyer (New York) at Debevoise & Plimpton, Hong Kong SAR, presented a number of concrete scenarios. These scenarios covered a broad range of situations where arbitrator conflicts or challenges might arise, including issue conflicts and close friendships and relationships between arbitrators, parties, counsel, experts, third party funders and witnesses. The members of the audience participated actively in this session, volunteering their views and sharing their personal experiences with arbitrator challenges.

At the end of the workshop, **Noradèle Radjai**, Partner at Lalive, Geneva and Co-Chair of the IBA Arb40 Subcommittee, gave closing remarks, touching on the issues raised by the panellists and audience members.

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Submitted by Z.J. Jennifer Lim, ArbitralWomen Member, Registered Foreign Lawyer (New York), Debevoise & Plimpton, Hong Kong SAR

jurisdictions. **Hamid Abdulkareem**, Partner at Aluko & Oyebode, Lagos covered Nigeria and Africa more generally, **Wonyoung Karyn Yoo**, Associate at Kim & Chang, Seoul covered Korea

and the People's Republic of China, and **Shreyas Jayasimha**, Founder of Aarna Law, Bangalore covered India.

The second panel, comprising **Ana Serra e Moura**, Deputy Secretary Gen-

## LCIA Asia-Pacific Users' Council Symposium, 22 September 2019, Seoul, South Korea

**The LCIA Asia Pacific Users' Council Symposium**, which this year preceded the IBA's Annual Conference in Seoul, South Korea, was opened by **Paula Hodges QC** of Herbert Smith Freehills London, President of the LCIA Court as well as member and advocate of ArbitralWomen.

The symposium featured an LCIA 'Tylney Hall' style session, whereby delegates are encouraged to submit topics and questions in advance. On the day, participants engage in a free flowing discussion of the topics raised and other subjects of key interest to the arbitration and ADR community. Taking its name from the infamous Tylney Hall Hotel where the LCIA hosts its annual flagship sym-

posia, this interactive style has been the LCIA's long-standing approach to event sessions and delegate participation, introducing the latest topics and trends in International Arbitration and ADR.

**Liz Kyo-Hwa Chung** of Microsoft, Seoul, and President of the LCIA Asia Pacific Users' Council, and **Jern-Fei Ng QC** of Essex Court Chambers, London, co-chaired the 'Tylney' session in Seoul. An anonymised version of the topics covered can be found on the LCIA website.

The event was closed with a keynote address by **Dr. Eun Young Park** of Kim & Chang, Seoul, and Vice President of the LCIA Court, on International

Paula Hodges QC opens the LCIA Asia Pacific Users' Council Symposium (22 September 2019)

Arbitration in the Era of Trade Wars and Nationalism — a speech which has been published on the LCIA website.

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Submitted by Jack Stanley, Digital Marketing Coordinator, London Court of International Arbitration, London, United Kingdom



## IBA Annual Conference Seoul 2019, 22–27 September, 2019, Seoul, South Korea

### The IBA International

Construction Projects Committee organized a cycle of conferences on construction disputes at the IBA Annual Conference that took place in Seoul, South Korea, from 22 to 27 September 2019. On 25 September 2019, it held a session on the following topic: “*Alternative dispute resolution in construction: a smorgasbord of approaches but little appetite*”.

The first panel provided an overview on the use of ADR mechanisms by construction practitioners in the different regions of the world.

The second panel discussed the pros and cons of three specific ADR mechanisms, namely adjudication, mediation and dispute boards, and of multi-tier clauses.

The session was chaired and moderated by **Marco Padovan** (Studio Legale Padovan, Milan). The panels included speakers **Yasemine Cetinel** (Cetinel Law Firm, Istanbul), **Doug Jones** (Atkin Chambers, London), **Marina Matousekova** (CastaldiPartners, Paris),



Left to Right: Paul Taggart, Doug Jones, Andreas Roquette, Marina Matousekova, Marco Padovan, Yasemine Cetinel, Ian De Vaz

**Andreas Roquette** (CMS Germany, Berlin), **Paul Taggart** (Construction Contract Services, Rome) and **Ian De Vaz** (WongPartnership, Hong Kong).

Submitted by Marina Matousekova, ArbitralWomen member, CastaldiPartners, Partner, Paris, France

## ICCA-ASIL Task Force on Damages Breakfast, 23 September 2019, Seoul, South Korea



Left to right: Gabrielle Nater-Bass, M. Alexis Maniatis, Sarah Grimmer

During the International Bar Association Annual Conference in Seoul, the ICCA-ASIL Task Force on Damages in International Arbitration hosted a one-hour seminar updating attendees on its work to develop a web application (“app”) designed to assist practitioners and arbitrators with damages-related issues.

The Task Force was represented by **Gabrielle Nater-Bass**, Partner at Homburger and co-chair of the Task Force, and Task Force Members Sarah Grimmer, Secretary-General of Hong Kong International Arbitration Centre and **M. Alexis Maniatis**, President & Principal, The Brattle Group.

Professor **Hi-Taek Shin**, Chairman of KCAB International and member of the ICCA Governing Board

gave opening remarks. Gabrielle Nater-Bass provided an interactive demonstration of the app, which comprehensively maps out the various procedural, legal and financial issues that arise in connection with damages in arbitration. The app also includes sources for further research. The panelists demonstrated how the app can be used to focus on select issues related to damages, including matters of procedure (for example, bifurcation and the use of experts), international law (for example, the appropriate valuation date), common

law (for example, causation and limiting principles of compensation), and financial issues (for example, post- and pre-award interest). The seminar concluded with the confirmation that the app will be made available as a free resource with the goal of improving the quality, consistency and rigor with which damages issues are addressed in international arbitration. The expected launch will take place in May 2020 at the ICCA Congress 2020 in Edinburgh.

Submitted by Azeezah Goodwin, Associate, Debevoise & Plimpton LLP



Hi-Taek Shin

## 13<sup>th</sup> Annual European Gas & LNG Summit, 23-24 September 2019, Amsterdam, the Netherlands



Left to Right: Jakub Przyborowicz, Bart Jan Hoevers, Ana Stanič, Stuart Elliott

**S&P Global and Platts jointly** organised the 13<sup>th</sup> European Gas & LNG Summit in Amsterdam under the title “Ensuring Gas’ future in the fuels mix”.

**Ana Stanič**, member of ArbitralWomen and Director of E&A Law participated in a panel debate on *Pipeline and LNG supporting supply to Europe* and discussed the legal and practical implications of the recent decision

of the EU Court of Justice regarding OPAL exemption for Nord Stream 2 and other gas transit routes for Russian gas to Europe, as well as the future of gas in the EU. The other panellists were **Ayan Bhattacharji**, Business Intelligence and Marketing Manager of Interconnector, who spoke about the challenges of the Interconnector in a post Brexit world and **Jakub Przyborowich**, Coordinator

of Polish Gaz-system, who spoke about Polish gas demand and security of supply objectives post 2022. The panel was moderated by **Stuart Elliott**, Senior Writer, European Gas and LNG, S&P Global Platts.

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

## A Fresh Look at an Old Concept: Facilitation of Settlements in Arbitral Proceedings, 24 September 2019, Seoul, South Korea



Left to right: Gabrielle Nater-Bass, Benjamin Hughes, Andrea Meier, Joongi Kim, Harold Frey, Christian Oetiker

On 24 September 2019, KCAB INTERNATIONAL, SCAI and ASA hosted a joint event in Seoul on the topic “A Fresh look at an old concept: Facilitation of settlements in arbitral proceedings”. The panelists explored how and when arbitrators should act as settlement facilitators. They talked about the Swiss tradition of settlement facilitation, which can be encountered particularly in Swiss courts and domestic arbitration, and the pros and cons of using this approach in international arbitration. They looked at the techniques that an arbitrator can apply if he or she intends to offer settlement facilitation services, and whether the arbitrator should proactively offer these services or whether the initiative should come from the parties. The panelists pointed out how facilitation of settlements by arbitrators can contribute significantly to reducing time and costs if the settlement negotiations are successful. At the same time, certain precautions need to be taken if the arbitrator takes on the role of a settlement facilitator. Most importantly, the arbitrator should seek the express consent of all parties and

obtain a waiver in which the parties confirm that the arbitrator's involvement in the settlement negotiations does not disqualify him or her from continuing to serve as arbitrator in the event a settlement fails and will not be used as a ground for challenge of the arbitrator. The panelists agreed that caucusing — i.e. separate discussions between the arbitrator and the parties and the arbitrator going back and forth between the parties — would in most cases not be appropriate. The panel also discussed alternatives to arbitrator-facilitated settlements. The presentations were followed by a lively debate among the panel and the audience. Some argued that the role of the arbitrator was incompatible with settlement facilitation and that mediation was the better alternative. Others took the view that settlement facilitation by arbitrators is an additional alternative available to the parties and that it depends on the case and the circumstances, including the background of the parties, which method works best.

After the debate, **Gabrielle Nater-Bass**, President of the SCAI Arbitration Court, talked about the benefits of choosing Switzerland and the Swiss Rules for international arbitration cases.

Ms Nater-Bass explained that for over 100 years Switzerland has served as a preferred venue for international arbitration proceedings, and why this has been the case. Besides having a multicultural arbitration community, Switzerland is known to have efficient and arbitration-friendly courts and an arbitration law that allows maximization of party autonomy, as parties may decide on the procedural framework, arbitrators, hearing venues, languages and the applicable law. After having very briefly addressed the advantages of choosing Swiss law as a well-settled and easily accessible body of law for arbitrations, Ms Nater-Bass turned to the core of her presentation: “the benefits of arbitration under the Swiss Rules”. Ms. Nater-Bass convincingly showed that the Swiss Rules are a well-tested set of rules, having entered into force in 2004 and undergone a light revision in 2012. The Swiss Rules are modern, up to date and very flexible, allowing for a speedy and efficient conduct of arbitration proceedings, with an average duration that is very competitive compared with the average duration of arbitration proceedings administered by other arbitral institutions. Ms Nater-Bass explained that the reason for that is the light administration, a distinctive feature of arbitrations under the Swiss Rules, where the control of the Court is limited to monitoring deadlines and costs and where no scrutiny of awards takes place.

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Submitted by Gabrielle Nater-Bass, ArbitralWomen member, Partner at Homburger, Zurich, Switzerland and President of the SCAI Arbitration Court, and Andrea Meier, Partner, Wartmann Merker, Zurich, Switzerland

## Colloquium on Actors in International Investment Law, 26–27 September 2019, Paris, France



Richard (Rory) Walk and Maria Beatriz Burghetto

encouraging frivolous claims. Litigation financing also serves a law-making and rule-making function, to the extent it requires tribunals, institutions, and States to address previously unresolved issues through case decisions, rules amendments, national law reform, and novel treaty provisions dealing with funding. The increasing sophistication of funding models, for example, challenges the assumption that a funded claimant is necessarily impecunious and thus that a security for costs order is warranted. The rise of funding has also led to broader discussion about systemic reforms and values—such as transparency, accountability, and access to justice—around which the investment arbitration community may be reaching consensus, if not unanimity.

**Pascale Accaoui Lorfing** (panel 5 on “Scrutiny by Public Institutions”) spoke more specifically on *Screening by National Institutions outside the European Union in Light of the OECD, UNCTAD and Other Guidelines for Recipient Country Investment Policies*. Her presentation focused on what the screening by national institutions is about, how states (i) identify what they consider to be at risk and (ii) express this limitation, its purpose and the impact on foreign investment. Pascale’s presentation emphasized the determination and the management of the



**A Colloquium on Actors in International Investment: Beyond Claimants, Respondents and Arbitrators**, took place in Paris on 26-27 September 2019 at the University Paris II, Panthéon – Assas (Paris), jointly organized by Catharine Titi (French National Centre for Scientific Research (CNRS)- CERSA, University Paris II Panthéon-Assas), Katia Fach Gómez, University of Zaragoza and Anastasios Gourgourinis, National and Kapodistrian University of Athens. The two-day conference was rich in high quality speakers and topics covered by no less than 16 panels. The programme may be viewed here.

**Maria Beatriz Burghetto** and **Ina Popova** spoke on panel 3, on the role of “Third-Party Funding/Funders.” Maria Beatriz spoke about funders’ risk assessment in investment arbitration, with a focus on claims involving developing countries. She identified (i) case-related risks, such as those pertaining to the merits of the case, money-related ones, including the defendant state’s track record in terms of compliance with awards and people-related risks, such as the experience and track record of counsel, experts and arbitrators, and (ii) context-related risks, such as the estimated

duration of the case, whether there is a counterclaim, whether there are other parties with interest in the claim and the relationship with other cases funded—or co-funded—by the same funder. Unlike lawyers, who focus on the legal aspect of cases, third-party funders view claims from the perspective of their dual mandate to increase the value of the investment they make on them, on behalf of the fund’s investors, while mitigating risk, all that in the shortest time possible. It is essential for practitioners to bear this in mind in order to better advise their clients when applying for funding and during the course of the arbitral proceedings.

Ina, in turn, discussed what lessons could be drawn from funded disputes, addressing third-party funding’s gatekeeping, law-making, and rule-making functions. Drawing on an empirical analysis of outcomes in the (admittedly limited) group of investment treaty disputes that are publicly known to have been financed by a third party, she noted that claimants succeeded on the merits in funded cases at a higher rate than the ICSID average. This tends to provide statistical support for the idea that litigation financing acts as a gatekeeping filter for unmeritorious claims, as opposed to



Left to right: Emanuel Castellarin, Iza Lejarraga, Pascale Accaoui Lorfing, Aliko-Athina Papanastasiou



Left to right: Sufyan El Droubi, Thomas Papanastasiou, Clotilde Jourdain-Fortier, Gustavo Laborde, Jana Jandova

risk at national level via the delimitation of the scope of national security interest, and at the international level, via the terms of several bilateral investment treaties. She then described the limits to the national security interest that result from international instruments. The approach took into consideration the OECD and other Guidelines and principles (the OECD Code of Liberalisation of Capital Movements and of Current Invisibles Operations, the OECD Declaration on International Investment and Multinational Enterprises, the Recommendation on Member Country Measures concerning National Treatment of Foreign-Controlled Enterprises in OECD Member Countries and Based on Consideration of Public Order and Essential Security Interests, the National Treatment's in-

strument and the OECD Guidelines for Recipient Country Investment Policies relating to National Security), and the principles that are set out and highlighted therein, such as non-discrimination, transparency and predictability, regulatory proportionality and accountability. These non-binding principles and recommendations serve as guidance to the states from which they may draw inspiration. The analysis also comprised BITs and FTAs that may or may not include the "national interest exception" and their impact on states' behavior, and customary international law as a limit to the notion national security interest. Pascale concluded by highlighting the importance of the interpretation of the will of the state as it results from the international instrument by which it is

bound, based on the way the provision is drafted and the assessment of the particular measure taken in light of the principle of good faith.

**Jana Jandova** (panel 16 on "Investment Promotion Agencies, Investment Facilitation Mechanisms, and Political Risk Insurance") spoke about the role of Investment Promotion Agencies in attracting foreign direct investments to host countries. She explained what tools the Investment Promotion Agencies use to entice investments to their respective countries and commented on the exponential growth of the number of agencies in the 1980s and the 1990s. She then commented on the growth of foreign direct investment (FDI) and explained that while the FDIs also grew exponentially in those years, the growth was only very marginally attributable to Investment Promotion Agencies.

Jana then argued that there is a limited role for these agencies in developed countries for three reasons: (i) investors' appetite to invest in a foreign country depends on the status of the target economy and the concerned industry, rather than on whether they receive assistance from an investment promotion agency; (ii) one of the traditional roles of an investment promotion agency -building awareness about the home country, its tax system, labour market, etc.- has been taken over by the Internet; (iii) developed countries recently started screening foreign investments concerning sectors of public interest and national security in response to the growing influence of the People's Republic of China. She then expressed the opinion that Investment Promotion Agencies still do and shall continue to play a role in developing countries.

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Submitted by Pascale Accaoui Lorfing, ArbitralWomen member, Independent Researcher (Paris), Member of the ICC Institute of World Business law and Associate Member of CREDIMI; María Beatriz Burghetto, ArbitralWomen Board member, Of-counsel at JA Cremades & partners, Paris, Jana Jandova, CFA, Director, Deloitte, Paris, France & and Ina Popova, ArbitralWomen member, Partner at Debevoise & Plimpton LLP, New York and Paris

## ArbitralWomen SpeedNet, 1 October 2019, London, UK



ArbitralWomen held the latest in its series of successful SpeedNet events in London on 1 October 2019. The SpeedNet, which was generously hosted by Grant Thornton

UK LLP, provided the opportunity for female dispute resolution practitioners to network and make new contacts in collegiate surroundings. Members of the international dispute

resolution community from as far afield as Canada, Kenya and Sweden braved the rain to join us in London.

ArbitralWomen Director **Amanda Lee** and member **Marion Lespiau** had the pleasure of hosting the SpeedNet, which was well received by attendees.

ArbitralWomen wishes to thank Grant Thornton UK LLP for its support in the hosting and organisation of this event.

Submitted by Amanda Lee, Director of ArbitralWomen, Arbitrator and Consultant, Seymours, London, UK and Marion Lespiau, member of ArbitralWomen, Associate Director, Grant Thornton UK LLP, London, UK

## Conference on the Revised Swiss Rules of Mediation, 1 October 2019, Zürich, Switzerland

On 1 October 2019 the Swiss Chambers' Arbitration Institution (SCAI), the Zürich Chamber of Commerce (ZCC) and the Swiss Chamber of Commercial Mediation (SCCM) jointly organized a conference on SCAI's 2019 Revised Swiss Rules of Mediation.

The conference was moderated by **Julia Jung**, Senior Associate at Bär & Karrer Ltd., Zürich, and Board member of the SCCM.

At the beginning, **Regine Sauter**, Director of ZCC and President of SCAI, gave a short introduction highlighting Switzerland's current role in mediation and its potential role in the future. She pointed out that Switzerland is well positioned now with SCAI's 2019 Revised Swiss Rules of Mediation to take on a pioneering role in mediation worldwide.

**Clarisse von Wunschheim**, Partner, Altenburger Ltd., Zürich, gave a presentation on the new United Nations Convention on International Settlement Agreements ("Singapore Convention"). She pointed out the advantages of this



Left to right: Clarisse Von Wunschheim, Caroline Ming, Thomas Sieber and Julia Jung

young Convention, drawing comparisons with the beginnings of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. She advocated a more courageous approach on the part of Switzerland, especially in view of potential accession and ratification to the Singapore Convention.

**Caroline Ming**, Executive Director

and General Counsel at SCAI gave a presentation together with Julia Jung on SCAI's 2019 Revised Swiss Rules of Mediation, explaining the structure behind the new Rules. They pointed out the high success rate of mediation proceedings and how mediation and arbitration can complement one another. Finally, they explained that the 2019 Revised

Swiss Rules of Mediation are the first institutional rules that have already fully implemented the requirements of the Singapore Convention. Compared to the 2007 Swiss Mediation Rules, the 2019 Revised Swiss Rules of Mediation provide 4 main features:

- A simplified procedure for designation of a mediator in certain types of cases, art. 5;
- Provision of a Certificate of Mediation, art. 16(5);

- Certification and authentication of Settlement Agreements, arts. 17(2) and 17(3); and
- Creation of an Advisory Council for Mediation art. 24(4).

Finally, **Thomas Sieber**, Member of the Executive Board, Bâloise Group, Basel, pointed out the importance of mediation in today's business world and identified the improvements that still need to be undertaken from an entrepreneurial perspective in order for

mediation to play a more vital role in dispute resolution. However, he pointed out that SCA's 2019 Revised Swiss Rules of Mediation are certainly a step into the right direction.

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Submitted by Julia Jung, Senior Associate with Bär & Karrer Ltd. and Board Member of the Swiss Chamber for Commercial Mediation (SCCM), Zürich, Switzerland

## Diversity Update & Speed Networking, 2 October 2019, Stockholm, Sweden



Left to right: Aisha Nadar, Annette Magnuson, Mirèze Philippe

**The Dispute Resolution Board Federation (DRBF)** organised a conference and a workshop on "Dispute Boards in the Nordics", from 2 to 4 October 2019 in Stockholm. As a kick-off for the conference, a "Diversity Update and Speed Networking" event was jointly organised by **Aisha Nadar**, FIDIC expert and arbitrator, DRBF, the Stockholm Chamber of Commerce Arbitration Institute (SCC) and ArbitralWomen. After introductory remarks by Ms Nadar, **Annette Magnuson**, Secretary General, SCC, and **Mirèze Philippe**, Special Counsel, ICC, and ArbitralWomen co-founder,

explained where we stand with gender diversity and what has so far been achieved, and shared statistics about nomination of female arbitrators. They presented the activities of their respective institutions, ArbitralWomen and the Equal Representation in Arbitration Pledge. They also addressed issues related to implicit bias, how they are manifested and ways to overcome them.

The Speed Networking that followed was an interesting experience gathering approximately 20 women and men, experienced practitioners and those new to the field, from the dispute resolution and construction communities. Ms Nadar

and Ann Russo, Executive Director, DRBF, prepared ten-minute rounds so that half of the participants meet with Ms Magnuson and the other half with Ms Philippe on one-to-one. All participants convened again in a plenary; Ms Magnuson and Ms Philippe shared their views and the highlights of the discussions. It was interesting to observe how both women and men felt discriminated at one point or another during their career. A man for example felt discriminated by lawyers when he moved from his career as in-house to lawyer. Another man shared his disappointment about being discriminated in a community as a foreign practitioner although he has been living and working in such community for over 20 years. One woman was concerned about her workplace where young female lawyers were discriminated by an older generation of male and female colleagues. Everyone agreed that discrimination has multi-faces. Also, the recurrent comment about women not promoting themselves and daring to run for office was pointed out.

The networking continued over cocktails in the beautiful Grand Hôtel Stockholm.

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Submitted by Mirèze Philippe, Co-founder ArbitralWomen, Special Counsel, ICC International Court of Arbitration

## 14<sup>th</sup> ICC New York Conference on International Arbitration, 3-4 October 2019, New York, N.Y., USA

For the 14<sup>th</sup> ICC New York Conference, **Alexandra Akerly**, led the planning committee comprised of **Teddy Baldwin**, **Gabrielle Hurley**, **Ina Popova**, **Ank Santens** and **Janet Walker**, of Arbitration Place and Vice Chair, ICC Canada Partner, to develop panels on a range of topics of interest to arbitration practitioners in North America and beyond.

Janet Walker moderated the first panel: "Bench and Bar in Conversation: Landmark Decisions in North America", which featured **Judge Shira Scheindlin**, senior judge of the Second District Federal Court; **The Hon Ian Binnie CC QC**, Supreme Court of Canada retired judge; **Justice Saliann Scarpulla**, the designated arbitration judge in the New York State Court; and **Marc Goldstein**, an independent New York arbitration practitioner.

This panel included a lively discussion of the issues of labour rights and international commercial arbitration agree-



Left to Right: Justice Saliann Scarpulla, The Hon Ian Binnie, Judge Shira Scheindlin, Prof Janet Walker

ments in the gig economy that have arisen in cases before the Supreme Court of the United States and that are now coming before the Supreme Court of Canada (SCC). The ICC will be among 17 intervenors in the SCC and were, filing their brief that day. President of the Court **Alexis**

**Mourre** commented on the importance of the issues in this case to the ICC.

Submitted by Janet Walker, ArbitralWomen founding member, independent arbitrator at Arbitration Place, Toronto, Canada

## Costa Rican Young Arbitrators 2019 Arbitration Day, 4 October 2019, San Jose, Costa Rica



Left to Right: Alberto Fernández, Salomé Reynoso, Mariela Martínez

**The Arbitration Day of the Costa Rican Young Arbitrators (CYA)** took place at the Bar Association of San Jose in Costa Rica on October 4, 2019. This is the leading event of the Association, and many members of ArbitralWomen participated as speakers and moderators.

ArbitralWomen Member **Silvia Trejos**, together with CYA President, **Sophia Villalta Chong**, and the organizing committee, assembled a high-caliber roster of speakers to address a series of interesting arbitration topics such as soft law rules, fast track arbitration, arbitration clauses, and the



Left to Right: Andrea Hulbert, Rebeca E. Mosquera, Sebastian Ayala, Arturo Guerrero

arbitral proceeding under the ICC Rules. Ms. Trejos together with **Paulina Rodriguez** and ICC YAF Mexico representative, **Veronica Esquivel**, walked the audience through the various general steps counsel must follow in an arbitration proceeding under the ICC Rules.

ArbitralWomen Member **Josselinee Roa Palomino** moderated the panel on arbitration clauses in non-conventional documents, where the panelists discussed the procedural issues with arbitration clauses in electronic agreements and arbitration clauses in the development and financing of Startups. The panelists concluded that arbitration agreements entered in electronic media are within the formal validity parameters of the arbitration clause. **Mauricio Paris**, **Arantxa Cuadrado** and **Willy Carbajal** joined Josselinee in this debate.

ArbitralWomen Members **Andrea Hulbert** and **Rebeca E. Mosquera**

participated in the panel on soft law together with **Arturo Guerrero** and **Sebastian Ayala**. The speakers delivered insightful comments on soft law with a special focus on the IBA Guidelines and the Prague Rules, and what has been the experience in the application of the rules in jurisdictions like Costa Rica in comparison with the United States.

ArbitralWomen Member **Salomé Reynoso** moderated a lively panel on the main challenges faced by international arbitration, including managing faster arbitration procedures. The speakers, **Mariela Martínez** and **Alberto Fernández López** delivered insightful comments about the characteristics, differences, implications, and convenience

of conventional arbitrations vs. fast track arbitrations.

The conference was followed by a networking reception and dinner.

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Submitted by Andrea Hulbert, Founding Partner at Hulbert Volio Montero, San Jose, Costa Rica; Rebeca E. Mosquera, Litigation and Arbitration Associate at Akerman, New York and Miami, USA; Silvia Trejos, Corporate and Dispute Resolution Associate at Lexincorp, San Jose, Costa Rica; Josselinee Roa Palomino, Dispute Resolution Associate at Alva Pinto & Ponce de Leon, Lima, Peru; and Salomé Reynoso, Analysis and Conflict Resolution Attorney at Pontificia Universidad Católica, Lima, Peru

## Tempora Mutantur: International Arbitration, 4 October 2019, Rovereto, Italy

**AIA-ARBIT-40**, together with the Italian Chapter of the Club Español del Arbitraje held a conference at the Museum of Modern and Contemporary Art (MART) in Rovereto, Italy, entitled "*Tempora Mutantur: International Arbitration in Europe*". The event was organized with the support of Asa Below 40, CEA-40, and AIA.

The conference covered a wide range of topics regarding international arbitration with a particular focus on the peculiarities and specificities of arbitration in different industries and in different countries.

After a welcome introduction by **Anna Biasiolo** (BonelliErede, Milan, ArbitralWomen Member), the first panel, composed of **Matteo Dragoni** (BonelliErede, Milan), **Davide Rossetti** (DLA Piper, Milan), **Daniele Guarnieri** (Nestlé Italiana S.p.A.) and Lukas Innerebner (Baker McKenzie, Zurich) illustrated the use of international arbitration in the fields of art, fashion and food.

The second panel, titled "*the Landscape of Arbitration in Europe*" discussed hot topics and challenges of international arbitration in key European juris-



Left to right: Catherine Anne Kunz, Lucia Montes Saralegui, Antonio Musella, Gregorio Pettazzi, Bianca Berardicurti, Daniel Segoin, Fabio Santacroce, and Anna Biasiolo

dictions. **Catherine Anne Kunz** (Lalive, Geneva, ArbitralWomen Member), **Lucia Montes Saralegui** (Cuatrecasas, Madrid, ArbitralWomen Member), **Antonio Musella** (Castaldi Partners, Paris) and **Fabio Santacroce** (ArbLit, Milan) explored the most recent developments in international arbitration in their respective countries. **Daniel Segoin** (EU Commission) gave some insights on the difficult interplay between the EU and international arbitration.

The panels were moderated by **Bianca Berardicurti** (Legance, Rome) and **Gregorio Pettazzi** (Freshfields, Frankfurt).

**Anna Biasiolo** concluded this enriching conference, highlighting that the most recent trends towards specialized arbitration (including the multiplication of dispute resolution centers) might not necessarily have a true market legitimacy.

The Annual Event of the Italian Chapter of the Club Español del Arbitraje, organized with the support of AIA followed in the afternoon.

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Submitted by Anna Biasiolo, ArbitralWomen, Member of the Executive committee of the AIA-ARBIT-40 association, Senior associate at BonelliErede, Milan, Italy

## 6<sup>th</sup> Congress of Expert Witnesses and Valuers with International Participation 4-5 October 2019, Zagreb, Croatia

**The Croatian Association of Court Expert Witnesses and Valuers** organised the 6th Congress of Expert Witnesses and Valuers in Zagreb in October. This two-day Conference was attended by 650 delegates and featured over 70 presentations by

court experts, arbitrators, judges, state government attorneys and representatives of the various Croatian Ministries, with the aim of promoting the work and ethical standards of court expert witnesses including in arbitrations. In the plenary session, **Ana Stanič**, ArbitralWomen

member and Director of E&A Law Limited, discussed the Role of Experts in International Investment Arbitrations.

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

## The 4<sup>th</sup> CARTAL Conference on International Arbitration, 5- 6 October, 2019, Jodhpur, India

**The 4<sup>th</sup> edition of the CARTAL Conference on International Arbitration** was organised at National Law University, Jodhpur on 5th and 6<sup>th</sup> October, 2019. The Conference was institutionally supported by the SAARC Arbitration Council, VIAC, ICC International Court of Arbitration, SIAC, AFIA, Young ICCA, Chartered Institute of Arbitrators (India), MCIA, Bar Association of India, and the Society of Indian Law Firms. Our knowledge partners were SCC Online and the Eastern Book Company.

The Conference featured panel discussions on three topics:

- i. Human Rights and Environmental Protection Concerns in International Investment Arbitration;
- ii. Taking of Evidence in International Arbitration: Prague Rules versus IBA Rules; and
- iii. Towards Institutional Arbitration in India.

The *first* panel addressed the long-standing conflict between economic development and human rights. While investment from developed countries is considered to be essential for the economic development of developing countries, a concern has emerged as to the manner in which such investments comply with universally recognized human rights, such as the right to a safe and healthy environment. Taking note of

recent international investment agreements which have taken a positive approach towards addressing such issues, this panel discussed the extent to which Investor State Dispute Settlement mech-

anisms can address environmental and human rights concerns.

The *second* panel discussed taking of evidence in international arbitration. International arbitrations have long been



Left to right: Meaghan Gragg, Neeti Sachdeva, Thomas Snider, Ajay Thomas, Madhvendra Singh



Left to right: Shwetha Bidhuri, Payal Chawla, Tejas Karia, Justice Madan B. Lokur Arun, Shaneen Parikh and Hazel Tang

guided by the IBA Rules on the Taking of Evidence in International Arbitration, 2010. However, the past few years have seen dissatisfaction with the above rules. The criticism of IBA Rules being tilted too much in favour of common law adversarial process has led to emergence of a new set of rules — the Prague Rules on the Efficient Conduct of Proceedings in International Arbitration, 2018. These Rules aim to streamline arbitral procedures by allowing the tribunal a more active role. This panel also raised the question of the legitimacy of this debate given that arbitration was to be a remedy which was not to be marred by technicalities of procedures.

The *third* panel focused on India with regard to concerns for making a paradigmatic shift from ad hoc to institutional arbitration, as also reflected in

the 2019 Amendment to the Arbitration and Conciliation Act, 1996. The panel contemplated and discussed whether India is prepared for this transition, in terms of people, attitudes, infrastructure and legal culture? The presence of members of some of the major arbitral institutions in the world boded well for the quality of discussions that ensued and presented interesting viewpoints which India can learn from.

**CARTAL** endeavours to further academic research and study in the field of arbitration and dispute resolution and believes in and stands for equality and inclusivity of both genders in the sphere of academic discourse.

For the 4<sup>th</sup> edition of the Conference, Justice **Madan B Lokur**, Former Judge Supreme Court of India and Judge, Supreme Court of Fiji, graced the oc-

casional as the Guest of Honour and panellist in the third panel. **CARTAL** is also proud to have hosted extremely successful women in arbitration such as Ms. **Dilber Devitre** (Associate, Homburger Switzerland), Ms. **Payal Chawla** (Founder, JusContractus, Delhi), Ms. **Meaghan Gragg** (Partner, Hughes Hubbard & Reed, New York), Ms. **Neeti Sachdeva** (Registrar & Secretary General, MCIA), Ms. **Shaneen Parikh** (Partner, Cyril Amarchand Mangaldas, Mumbai), Ms. **Shwetha Bidhuri** (Head, South Asia, Singapore International Arbitration Centre), and Ms. **Hazel Tang** (Counsel, International Chamber of Commerce, Singapore).

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Submitted by: Centre for Advanced Research and Training in Arbitration Law of National Law University, Jodhpur, India

## 10<sup>th</sup> Turkey Energy Summit, 6 October 2019, Antalya, Turkey



Left to Right: Sohbet Karbuz, Ana Stanič, Sinan Ak

**10th Turkey Energy Summit** was organised under the auspices of the Ministry of Energy and Natural Resources of Republic of Turkey with the support of the Energy Market Regulatory Authority (EMRA). More than 1,500 national and international senior level representatives of public institutions and organizations of

Turkey and regional countries attended the Summit.

One of the 16 panels was entitled Commercialisation of Eastern Mediterranean Gas and was moderated by **Sohbet Karbuz**, Director of Hydrocarbons, OME.

**Ana Stanič**, member of ArbitralWomen and Director of E&A Law

participated in a panel debate discussing Building the Future Together in the East Mediterranean – International Law Perspective. The third panellist was Sinan Ak, CEO of Zorlu Enerji.

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

## YPCP Conference on Construction Arbitration in Eastern Europe, 8 October 2019, Paris, France

**The Young Professionals of Construction in Paris (YPCP)** organized a Conference on Construction Arbitration in Eastern Europe. This was the third of a series of conferences on specific regional issues construction practitioners may be faced with, the first two events being dedicated to Africa and the Mediterranean region. The Conference was hosted by Pinsent Masons in Paris on 8 October 2019.

**Frederic Gillion** (Pinsent Masons) made some opening remarks. The conference was moderated by **Ioana Knoll Tudor** (Jeantet) and the panelists were **Lukas Palecek** (ICC), **Marina**



Left to Right: Lukas Palecek, Marina Matousekova, Ioana Knoll Tudor, Sergey Alekhin and Frederic Gillion

**Matousekova** (CastaldiPartners) and **Sergey Alekhin** (Willkie Farr & Gallagher).

Submitted by Marina Matousekova, ArbitralWomen Member, CastaldiPartners, Partner, Paris, France

## Young ICCA Skills Training Workshop: I've received an arbitral award, what's next?, 9 October 2019, Prague, Czech Republic



Left to Right: Anna Kozmenko, Silvia Pavlica Dahlberg, Sarah Schröder, Kristen Young

**On 9 October 2019, Young ICCA** and the Ministry of Finance of the Czech Republic hosted a skills-training workshop in Prague addressing the actions that may be taken by parties after receiving an arbitral award. A full report and video footage of the event can be found at the end of this report.

One of the two panels was dedicated to the enforcement of arbitral awards. The all-female panel was moderated by **Kristen Young** (Partner at White & Case LLP in DC)

and featured **Sarah Schröder** (Associate at Cleary Gottlieb Steen & Hamilton LLP in Paris and member of ArbitralWomen), **Silvia Pavlica Dahlberg** (Partner at Vinge in Gothenburg) and **Anna Kozmenko** (Partner at Schellenberg Wittmer in Zurich and member of ArbitralWomen).

Sarah Schröder presented a general overview of how to enforce ICSID awards and noted that, in practice, a majority of ICSID awards result in settlement or voluntarily compliance so that no issue of enforcement arises. She also

addressed the practical consequences of the CJEU's Achmea judgment, which are still unclear since arbitral tribunals and national courts have so far adopted various approaches, and since EU Member States have still not terminated all their intra-EU BITs despite their January 2019 declarations. She also highlighted the significant questions that remain to be resolved after the recent judgment issued by the General Court of the CJEU in the Micula v. EC case annulling the Commission's 2015 decision that declared that any implementation or execution of the Micula award would constitute illegal State aid.

Silvia Dahlberg presented the rules of enforcement of arbitral awards under the New York Convention. She also addressed the meaning of public policy as a ground for refusing the enforcement of an award. She stressed that, in practice, this ground is only rarely used and is interpreted very narrowly, as covering only the fundamental

principles of a State's legal system. She also explained that domestic courts are increasingly taking into account public policy issues such as money laundering and corruption, and mentioned two recent cases where awards were set aside on public policy grounds (BAZ v BBA and others, in which the Singapore High Court set aside a portion of an award because it had been rendered against minors, and Belokon v Kyrgyzstan, in which the Paris Court of Appeals set aside an award on the basis of serious indications of

money laundering).

Finally, Anna Kozmenko addressed how to enforce an arbitral award without the rules of the ICSID Convention or the New York Convention. She stressed that it may be relevant to verify where an adverse party's assets are located prior to initiating an arbitration, as enforcement in a jurisdiction where neither the ICSID Convention nor the New York Convention apply (or where reciprocity reservations prevent the application of these instruments), can prove challenging. Due diligence research on international treaties and reciprocity

reservations, as well as on applicable domestic laws might prove useful. Finally, she addressed the difficulties that may be caused by rules of State immunity when enforcing an arbitral award.



Submitted by Sarah Schröder, ArbitralWomen member, Associate, Cleary Gottlieb Steen & Hamilton, Paris, France

## GIAC Arbitration Days, 9 to 11 October 2019, Tbilisi, Georgia



Left to Right: James Bridgeman SC, Nick Gvinadze, Giorgi Batlidze, Marina Matousekova

**Georgian International Arbitration Centre (GIAC)** held its Sixth Annual International Arbitration Conference in Tbilisi from 9 to 11 October 2019. During the two-day conference, panels composed of leading advocates, in house counsel, experts, academics and arbitrators discussed *"The role of dispute resolution in State economy,"* with an audience of experienced practitioners coming from Asia, Europe and the Middle East.

On the first day, **Giorgi Pertaia** (President of the Georgian Chamber of Commerce and Industry), **Thea Tsulukiani** (Minister of Justice of Georgia), **Carl Hartzell** (EU Ambassador to Georgia) and **Louisa Vinton** (Representative of UNDP in Georgia) made some opening remarks, fol-

lowed a keynote address by **Professor Emmanuel Gaillard** (Shearman & Sterling, Paris) on *"The sociology of international arbitration"*.

The first panel commented on *"The regional developments of arbitration"* with moderator **Ketevan Betaneli** (Freshfields Bruckhaus Deringer, Paris) and speakers **Mariam Gotsiridze** (Head of the Department of State Representation in Arbitration and Foreign State Courts, Ministry of Justice of Georgia), **Živa Filipič** (Managing Counsel, ICC International Court of Arbitration, Paris) and **Beka Injia** (Secretary General GIAC).

The second panel dealt with *"Business on dispute resolution"* with moderator **Nick Gvinadze** (Gvinadze & Partners, Tbilisi) and panelists **Karl Hennessee** (Vice-President and Head of Litigation &

Regulatory Affairs at Airbus SAS, Paris), **James Bridgeman** (FCI Arb Chartered Arbitrator, London), **Giorgi Batlidze** (BLC Law Office, Tbilisi) and **Marina Matousekova** (CastaldiPartners, Paris).

The third panel on *"Mediation: worth to try?"*, was moderated by **Irakli Kordzakhia** (Kordzakhia, Jgenti Law Firm, Tbilisi) and the speakers were **Sophie Chachava** (Independent mediator, Tbilisi), **Diana Paraguacuto-Maheo** (Foley Hoag, Paris) and **Sophie Tkemaladze** (Chair of the Georgian Association of Arbitrators).

On day two, the first panel discussed *"Protect to Attract vs. Protect to Protect"* with moderator **Yas Banifatemi** (Shearman & Sterling, Paris) and panelists **Patrick W. Pearsall** (Jenner & Block, Washington DC), **John Willems** (White&Case, Paris) and **Markiyani Kliuchkovskiy** (Asters, Kiev).

The second panel on *"Measures available in arbitration"* was moderated by **Fadri Lenggenhager** (Lenz & Staehelin, Geneva) and presented by panelists **José Feris** (Squire Patton Boggs, Paris), **Sebastian Seelmann-Eggebert** (Latham & Watkins LLP, Hamburg) and **Alice Fremuth-Wolf** (Secretary General at VIAC).

Submitted by Marina Matousekova, ArbitralWomen Member, CastaldiPartners, Partner, Paris, France

## 9<sup>th</sup> Investment Treaty Arbitration Conference, 9–11 October 2019, Prague, Czech Republic

This autumn, Prague saw the 9<sup>th</sup> edition of the Investment Treaty Arbitration Conference. The conference and the related workshops were organised under the auspices of the Ministry of Finance of the Czech Republic by the advisory firm KPMG. The conference was aimed at sharing of experience between senior government officials and top legal practitioners in the field of investment arbitration.

The main conference day (October 10) started with opening addresses of **Jiří Urban**, CEE Dispute Advisory Leader with KPMG, and **Martina Matejová**, Director of the Legislation and Dispute Agenda Department at the Ministry of Finance, Czech Republic. This year, the conference

participants had a unique opportunity to discuss somewhat less traditional areas relating to investment arbitration, including human rights and environmental issues, as well as some of the hottest topics in the field, including the recent Achmea case.

The panel on the non-traditional issues was chaired by **Susanne Spears**, Partner, Allen & Overy. The other panels tackled the topics of new techniques in investment treaty drafting (chaired by **Jeremy Sharpe**, Partner, Shearman & Sterling), and the problem of legitimate expectations (chaired by **Zachary Douglas QC**, Arbitrator, Matrix Chambers). Zachary Douglas also delivered the conference's keynote speech titled "The Perils of a Siege Mentality", in which he shared his views on the cur-

rent practice as well as the future of investment arbitration from an arbitrator's perspective. The Achmea panel was chaired by **Stephen Anway**, Partner, Squire Patton Boggs.

The conference was accompanied by several workshops: a practical session for respondent states, chaired by **Erica Stein**, Partner, Dechert, a KPMG facilitated workshop on quantum, an update on the ISDS reform by **Anna Joubin-Bret** (Secretary of UNCITRAL) and Young ICCA sessions, which included an all-female panel on enforcement of awards moderated by **Kristen Young**, Partner, White & Case.

Submitted by Suzanne Spears, Partner, Allen & Overy LLP

## Shifting Tides: Recent Developments in Latin American Rule of Law, 10 October 2019, New York, USA

New York University School of Law held a symposium on Latin America and the Rule of Law, organized by the Journal of International Law and Politics.

**José Alvarez**, former president of the American Society of International Law, provided the welcoming remarks. He noted that the rule of law was a timely and critical topic, encompassing a variety of metrics including equal application of the law, the right to a fair trial, the protection of fundamental human rights, the protection of liberty and security, and the means to resolve civil disputes without delay.

Banner: Shifting Tides, Recent Developments in Latin American Rule of Law

**Philip Alston**, former UN Human Rights Council Special Rapporteur moderated the panel entitled "**Venezuela: A Breakdown of the Rule of Law.**" He acknowledged the "scope of tragedy unfolding in Venezuela." He was joined by **Allan Brewer**, former Venezuelan

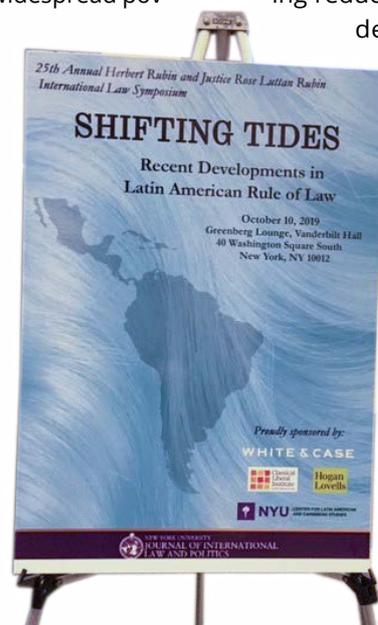
legislator, **Ligia Bolivar**, professor at Andres Bello Catholic University, and **Moises Rendon**, Director, Center for Strategic and International Studies. The panellists highlighted Venezuela's rapid devolution into a totalitarian state, citing instances of political persecution as well as increased restrictions on political participation. They also described the worsening economic situation, increased refugee outflows, and widespread poverty and food scarcity.

The second panel, "**Mexico: An Ongoing Anti-Corruption Battle and a Constitution Reformed,**" was moderated by **Richard Epstein**, NYU Law professor. He was joined by **Viridiana Rios**, Harvard University professor, **Antonio Cárdenas**, Partner, White & Case (Mexico

City), and **Janice Deaton**, Course Director at University of San Diego. The panellists discussed anti-corruption legal reforms taking place in Mexico. Ms. Rios estimated that annually there are over 40 million cases of corruption in Mexico, encompassing everything from direct bribery to conflicts of interest and nepotism. She noted that corruption has measurable economic costs, including reduced foreign investment,

decreased job creation, and GDP loss. Mr. Cárdenas highlighted challenges facing law firms operating in countries with high levels of corruption.

**Alberto Mora**, Associate Executive Director for Global Programs, American Bar Association (ABA) provided the keynote address. He noted the



ABA's commitment to promoting the rule of law globally, stating that the "rule of law is foundational and imperative to human liberty." He provided an overview of measures adopted by the ABA, including training attorneys and justices, promulgating technical guidelines, combatting corruption, and partnering with local bar associations, to encourage civil society engagement and advance the rule of law.

The final panel was called "NGOs: Providing International Help for International Solutions." **Jorge Castaneda**, NYU Wagner professor, moderated the panel, which focused

on human rights in Latin America. He was joined by **Juliana Barrios**, Managing Legal Officer, Open Society Justice Initiative (OSJI) and **Alejandra Cicero**, Program Officer, International Senior Lawyers Project (ISLP). Professor Castaneda described the potential of the Inter-american Human Rights Commission to advance the rule of law but lamented that it lacked resources and universal support across Latin America. Next, Ms Barrios provided an overview of OSJI's global rule of law initiatives. This included a project in Colombia aimed at reducing statelessness. She explained

that under Colombian law, children born to the undocumented in Colombia are not granted Colombian citizenship upon birth. OSJI worked to ensure that the children born to Venezuelan migrants are now granted Colombian citizenship. Ms. Cicero highlighted ISLP's efforts to improve environmental standards in the Amazon through training programs with local civil society organizations that lacked access to lawyers.

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Submitted by Nilufar Hossain, Legal Counsel, Bentham IMF, New York, New York

## AW-YAWP SpeedNet, 15 October 2019, Paris, France



Left to right: Asoid Garcia-Marquez and Cherine Foty

**ArbitralWomen and Young ArbitralWomen Practitioners**, in conjunction with Jones Day law firm, held a joint speed networking event for female arbitration and dispute resolution professionals of all ages. The event was designed to be an inter-generational networking event in which professionals, students, interns, and arbitrators alike had the chance to meet their peers and exchange experiences in an informal setting.

The evening began with welcome remarks from **Asoid Garcia-Marquez**, Vice President of ArbitralWomen and Chair of the YAWP Steering Committee and **Cherine Foty**, YAWP Steering Committee Member and Senior Associate at Jones Day. They remarked that this was the second YAWP event to be held in Paris, and the first joint SpeedNet between ArbitralWomen and YAWP.

A number ArbitralWomen Board Members were also in attendance including, **Mirèze Philippe**, **Juliette Fortin**, **Ileana Smeureanu**, **Elena Gutiérrez Garcia**, **Affef Ben Mansour**, and **Vanina Sucharitkul**.

Participants in the SpeedNet (Please crop this, remove the front part below the table at least. Then it won't look so cramped in the rear. Also if it can be lightened a bit the faces would show.)

Participants then engaged in several rounds of exchanges with each other, with more established attendees primarily discussing with younger attendees, mostly students and interns. The evening ended with drinks and refreshments.

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Submitted by Cherine Foty, YAWP Steering Committee Member, Senior Associate at Jones Day, Paris, France



Left to right: Vanina Sucharitkul, Affef Ben Mansour, Mirèze Philippe and Juliette Fortin

## Settlement of Investor-State Disputes: Are there alternatives to treaty arbitration? 16 October 2019, Vienna, Austria

On 16 October 2019, law firms DORDA and Jeantet organized a round table entitled “*Settlement of Investor-State Disputes – is there a need for alternatives to treaty arbitration? State and Investor perspectives - UNCITRAL Working Group III and beyond*”, hosted by DORDA in Vienna.

The event was organized on the occasion of the autumn annual session of the UNCITRAL Working Group III, which took place in Vienna between 14-18 October 2019. The Working Group III received a mandate to work on the possible reform of investor-State dispute settlement.

**Judit Knieper** (Legal Officer, International Trade Law Division, UNCTAD) introduced the audience to the state of the ongoing discussions within the Working Group III. The Working Group has already completed the first two phases of its mandate. Namely, it identified the concerns regarding ISDS (phase 1) and considered whether reform is desirable in light of the identified concerns (phase 2). The current phase, third and last, consists of developing relevant solutions for reform in those areas in which the Working Group concluded that reform is needed. These areas are: (i) cost and duration, (ii) consistency, coherence, predictability and correctness, (iii) arbitrators and decision makers and (iv) third party funding. The reform options are focusing on procedural aspects of ISDS, rather than substantive issues, are based on submissions by States with reform proposals and are developed by



Left to Right: Crina Baltag, Martina Polasek, August Reinisch, Tom Sikkora, Florian Kremslehner

the UNCITRAL Secretariat into working papers (there are 6 of them as of now).

Following this comprehensive presentation of the ongoing discussions within the Working Group, the speakers of the round table addressed the ongoing ICSID reforms, as well as some of the UNCITRAL Working Group reform proposals more in detail. The speakers of the round table were: **Crina Baltag** (Attorney-at-law, Senior Lecturer in Law), **Martina Polasek** (Deputy Secretary-General, ICSID), **August Reinisch** (Professor of International and European Law, University of Vienna) and **Tom Sikkora** (Senior Counsel, International Disputes Group, ExxonMobil). The round table was moderated by **Florian Kremslehner** (Partner, DORDA) and **Ioana Knoll-Tudor** (Local Partner, Jeantet).

Martina Polasek gave an introduc-

tion into the reforms which are currently under discussion within ICSID, while the other speakers addressed more specific reforms, such as: the consistency and coherence of arbitral decisions as well as the concept of “correctness”, the proposed reforms regarding the creation of an investment court and appellate body and the cost and reputation of investment arbitration. The questions from the audience, composed of practitioners, members of State delegations, arbitrators and legal counsel, allowed the speakers to address further concerns and issues and gave rise to a dynamic exchange between the speakers and the audience.

The event closed with a cocktail reception.

Submitted by Ioana Knoll-Tudor, Local Partner, Jeantet, Paris

## Lawyering in the Digital Age, 17–18 October 2019, Amsterdam, The Netherlands

A conference on “*Lawyering in the Digital Age*” held in Amsterdam from 17 to 19 October 2019 was organised by Professors **André Janssen** and **Pietro Ortolani** from Radboud University, **Michel Cannarsa** from

Lyon Catholic University, **Larry DiMatteo** from University of Florida, **Francisco de Elizalde** from IE University Madrid and **Mateja Durovic** from King’s College London. All topics discussed on the various panels were fascinating. They

addressed LegalTech matters from different perspectives.

The first panel addressed the topic of the Effects of Technology on Legal Practice. A panellist presented the Litigation Platform of Hangzhou

Internet Court and mentioned that between August 2017 and August 2019, over 26.000 cases were filed and that cases are solved online timely. She also indicated that Alibaba solves 95% of the disputes in-house and that only 5% go to the Hangzhou Internet Court. Regarding ODR services, it was indicated that people take what we give them. Fear of losing jobs is wrong said a speaker, we will simply work differently.

The second panel shared with the audience the experience in LegalTech in ADR. **Raffaele Battaglini**, Battaglini-De Sabo Law Firm, presented the smart ODR platform he is developing. **Mirèze Philippe**, Special Counsel, ICC, and ArbitralWomen co-founder, shared her experience in ODR and in building the ICC NetCase platform. She explained how best to use technology in arbitration whether a platform is used or only tech tools, while drawing attention to issues of cybersecurity and data protection which must be addressed at the outset of a procedure. She also mentioned how important it is to organise electronic documents in a coherent and intelligible way in order



Left to right: Raffaele Battaglini, Mirèze Philippe, Jin Ho Verdonschot

to retrieve them easily. In responding to questions and comments she shared her concern about the lack of access to justice and the fact that millions of people are deprived from remedy in civil and commercial small disputes, and indicated that the various ODR services such those presented at this conference are a hope for the users. Finally, **Jin Ho Verdonschot**, CEO Legal Tech, Justice Innovation, ODR, showed the platform he had built to resolve civil claims including family, real

estate and neighbourhood disputes.

LegalTech in Consumer Relations and Small Claims was the topic of the third panel. Then LegalTech in the Public Sector was discussed on the fourth panel, and the fifth panel debated about Legal Ethics that confronts Technology.

It was observed that artificial intelligence is useful because it can analyse a considerable amount of data in a matter of minutes or hours depending on the search, which human beings cannot do, but that human beings' appreciation and intuition remain indispensable. They think outside the box, which machines can so far not do, and even if machines will be able to do it, humans should always keep control. It was also pointed out that some services are technologically possible but not ethically acceptable or desirable, and that a certain amount of standardisation is desirable but not everything should be standardised.

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Submitted by Mirèze Philippe, Co-founder ArbitralWomen, Special Counsel, ICC International Court of Arbitration

## Women in Arbitration and International Law, 19 October 2019, Vienna, Austria

On 19 October 2019, the third *Freshfield's Women in Arbitration and International Law* breakfast event took place at the very foggy rooftop terrace of the 25 Hours Hotel overlooking Vienna. The event was attended by approximately 60 enthusiastic women in law. The event was kicked off with a Key Note Speech from **Dana Denis-Smith**, CEO of Obelisk Support and the First-100Years project who reflected on the path of women since they were admitted to study law in 1919. Thereafter **Alice Fremuth-Wolf**, Secretary General of the VIAC and one of the Austrian members of the ERA Pledge Steering Committee gave an update on the future plans for the ERA Pledge.



Left to right: Alice Fremuth-Wolf, Catherine Kessedjian, Lucy Greenwood, Niamh, Dana Denis-Smith. Back left to right: Ioana Knoll-Tudor, Aine Morgan

The discussion continued amongst the truly international panel of **Lucy Greenwood** (London), **Catherine Kessedjian** (Paris), **Ioana Knoll-Tudor** (Budapest) moderated by **Niamh Leinwather**, Principal Associate at Freshfields, Vienna. The panelists provided an insight into their personal experiences in forging a success-

ful career in international law. **Aine Morgan-Bauer**, gave a refreshing perspective from her coaching practice. The topics addressed included imposter syndrome, the lack of role models, the mental load as well as the measures law firms can take to put a stop to the leaky pipeline. The event was attended by a very interactive audience, includ-

ing the entire Vienna IAG team, who asked questions and provided comments throughout. The atmosphere was inspiring and empowering.

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Submitted by Niamh Leinwather, Rechtsanwältin, Freshfields Bruckhaus Deringer, Vienna, Austria

## São Paulo Arbitration Week and Launch of the Brazil Branch of CIArb, 21–27 October 2019, São Paulo, Brazil

During the week of October 21, São Paulo hosted the second edition of São Paulo Arbitration Week (SPAW). SPAW is a collaborative event for law firms, universities, associations and institutions from across Brazil to promote events relating to ADR. Various events were hosted around the city and the consensus among the attendees is that SPAW was once again a success. For the first two days of SPAW, CAM-CCBC held its Sixth Annual Congress on arbitration *"Today and Tomorrow in Arbitration."* Attracting nearly 500 registrants, Congress addressed the most current challenges facing arbitration and arbitration trends while encouraging debate in search of new solutions. Panelists from around the globe explored a variety of topics, including the user's perspective on arbitration, transparency in arbitration, cybersecurity and data protection, corruption in arbitration and



Left to right is Massimo Bendettelli, Ane Elisa Perez, Maria Claudia Procopoak, Ann Ryan Robertson and Jose Astigarraga

the tribunal's limits, artificial intelligence and class action arbitration.

ArbitralWomen Member and Vice-President of the Chartered Institute of Arbitrators (CIArb) **Ann Ryan Robertson**, FCIArb, participated on a panel with **Ane Elisa Perez**, **Jose Astigarraga**, **Maria Claudia Procopiak** and **Massimo Bendettelli**. The panel's topic *"What can arbitration still do to promote foreign investment?"* was of particular interest and relevance to the registrants because Brazil is party to only one bilateral investment treaty currently in force (the Brazil-Angola one).

Also during SPAW, the CIArb launched its Brazil Branch with a panel discussion focusing on various arbitration issues. The Brazil Branch is the 41st branch of the CIArb. Ann Ryan Robertson spoke on ethics in arbitration. Other speakers and commentators included **Cesar**

**Periera**, **Jeffery Elkinson**, **Brandon Malone**, **Frederico Singarajah**, **Andrea Galhardo Palma**, **Joaquim Muniz** and **Eugenia Marolla**. The panel discussion was followed by a lively rooftop cocktail reception hosted by the firm of Pinheiro Neto. São Paulo has a vibrant ADR community as evidenced by the fact that over 120 people attended the launch despite there being approximately six competing events that evening. Especially pleasing was the fact that over a third of the attendees were women, including partners and associates of Brazil's leading law firms, as well as members of the judiciary and government.

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Submitted by Ann Ryan Robertson, ArbitralWomen Member and Vice-President of the Chartered Institute of Arbitrators (CIArb)



Ann Ryan Robertson

## ArbitralWomen Challenge: New Ways to Challenge Diversity, 21 October 2019, Hong Kong

During Hong Kong Arbitration week, ArbitralWomen hosted an interactive breakfast discussion entitled “*ArbitralWomen Challenge: New Ways to Champion Diversity*”.

The panellists were **Neil Kaplan CBE QC SBS**, Arbitrator, Arbitration Chambers, **Chiann Bao**, Arbitrator, Arbitration Chambers, **Dana MacGrath**, President, ArbitralWomen and Investment Manager & Legal Counsel, Bentham IMF, **Christopher Boog**, Partner Schellenberg Wittmer, and **Sarah Thomas**, Partner, Morrison & Forester.

The Panel was moderated by **Nassim Hooshmandnia**, Registered Foreign Lawyer at Winston & Strawn in Hong Kong. **Vanina Sucharitul**, ArbitralWomen Board Member, Asia Events Director organized the event.

Nassim introduced the topic of championing diversity and explained that the intention of the event was to move beyond the questions of (i) whether a diversity (or gender) gap exists in arbitration and (ii) whether improving diversity is better for the arbitration field. The discussion was meant to cover how exactly to champion diversity through sponsorship, mentorship, and other forms of support to diverse arbitration practitioners, including women.

Neil Kaplan and Chiann Bao kicked off the discussion by discussing the genesis and evolution of their sponsorship relationship beginning when Chiann was Neil's student, then serving as his first arbitration legal assistant. Neil told us about how he came to suggest Chiann for the Secretary-General position at the HKIAC and conversed about his other legal assistants with diverse gender, nationalities and ethnicities.

Dana, Chris, and Sarah shared their personal sponsorship stories. Dana and Sarah explained how they were supported by male leaders in private practice, while Chris shared that his sponsor as a young lawyer was a woman.

The interactive discussion that ensued covered a number of topics. First, we all have a role to play. Men and women and individuals of all eth-



Left to Right: Christopher Boog, Dana MacGrath, Nassim Hooshmandnia, Sarah Thomas, Chiann Bao and Neil Kaplan

nicities and ages must contribute to championing diversity. Dana shared the importance of diverse practitioners, including women, taking on support roles, but the importance of men doing so as well. Second, Chris shared that unconscious bias is often, if not always, unavoidable; it is making an effort to ensure that our responses and actions are not dictated by such bias that is most important. Third, the recipient of the support must do their part too. Sarah explained that they should be assertive, communicate what their goals are (e.g. declare that they would like to make partner), and give their supporters their own support and loyalty. Fourth, Dana and Chris encouraged other to make a conscious personal decision to make a change to improve diversity with practical tips such as refusing to speak on non-diverse panels, for each self-promotion on LinkedIn promote two women colleagues. Fifth, Chiann discussed how arbitral institutions and tribunals can continue to make an impact by continuing to be chaired

by women and encouraging diversity in advocacy, respectively. Sixth, law firms can similarly make an impact by investing in and promoting diversity. A person's parental obligations should not impact the support they receive. Chiann shared that Chris had promoted three women in one year, all excellent lawyers who happened to be pregnant. Finally, Neil expressed the importance of awareness. He described the lack of awareness as one of the biggest hurdles against diversity and shared that the Goff Lecture had male speakers for 20 years because no one had noticed the lack of diversity.

The event was sponsored by Stephenson Harwood and Winston & Strawn with the support of the Chartered Institute of Arbitrators (East Asia Branch).

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Submitted by Nassim Hooshmandnia, ArbitralWomen member, Registered Foreign Lawyer at Winston & Strawn, Hong Kong with contributions from Karah Howard, Senior Associate, Pinsent Masons, Hong Kong

## VI Arbitration Congress CAM-CCBC—São Paulo Arbitration Week, 21 October 2019, São Paulo, Brazil



Left to Right: Frederico Singarajah, Eliana Baraldi, Alfredo Bullard, Ari MacKinnon and Ava Borrasso FCI Arb

### ArbitralWomen member

**Eliana Baraldi** moderated a panel on Corruption in Arbitration and the Arbitral Tribunal's Limits at the VI Congress CAM-CCBC during São Paulo Arbitration Week with ArbitralWomen member and panelist **Ava Borrasso** FCI Arb. The panel also included **Frederico Singarajah**, **Alfredo Bullard** and **Ari MacKinnon**. The Congress was attended by more than 450 attendees.

Ava Borrasso FCI Arb discussed valuable strategies for detecting corruption and money laundering

in international arbitration, having as a starting point the toolkit for arbitrators discussed in January 2019 at the International Arbitration and Corruption Conference that took place in Basel.

Alfredo Bullard brought a very interesting view of the limits of arbitrators' jurisdiction to decide agreements related to corruption, discussing the relation between public order and the arbitrability of corrupt acts.

Frederico Singarajah addressed the challenge of producing evidence to substantiate existence of corruption related to an agreement.

Ari MacKinnon closed the panel with a report on recent case law in the US, focusing on enforceability of an arbitral award construing a contract that was allegedly obtained through bribery and on how US courts have been dealing with public policy arguments thus far.

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Submitted by Eliana Baraldi, ArbitralWomen member, partner at Baraldi Mariani Advogados, São Paulo, Brazil & Ava Borrasso FCI Arb, ArbitralWomen member, principal of Ava J Borrasso, P.A., Miami, Florida

## 9<sup>th</sup> Annual GAR Live Hong Kong, 23 October 2019

**Session four: The IA team of the future – greener, more diverse, and better at combining cases with family life?**

The 9<sup>th</sup> Annual GAR Live Hong Kong took place during Hong Kong Arbitration Week 2019. The fourth and final session was on the topic of *'The IA team of the future – greener, more diverse, and better at combining cases with family life?'*

Rather than a traditional panel session, it was structured as an Oxford-style debate on the motion 'The older generation in international arbitration got it wrong in how they worked; the younger generation will do it better.' **Swee Yen Koh** (WongPartnership) and **Steven Finizio** (WilmerHale) spoke



Left to Right: Sir Bernard Rix, May Tai, Sarah Grimmer, Swee Yen Koh, Steve Finizio

for the motion, and **Sir Bernard Rix** (Twenty Essex) and **May Tai** (Herbert Smith Freehills) spoke against. The debate was chaired by **Sarah Grimmer**, HKIAC Secretary-General.

The debate ranged across a variety of

topics relevant to working practices in arbitration, including: mental and physical well-being/work-life balance; the impact of arbitration on the environment; juggling career and family life; and career choices beyond the law firm for younger practitioners. The speakers speaking against narrowly won the day.

Given the day-to-day relevance of these issues to many practitioners, this proved an interesting and lively debate with a lot of contributions from the floor.

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Submitted by May Tai, ArbitralWomen member, Managing Partner – Greater China, Herbert Smith Freehills, Hong Kong

# 10<sup>th</sup> International Conference — “Alternative Dispute Resolution – The Cooperation between Public Administration and Judiciary with the Business Sector”, 23-24 October 2019, Zagreb, Croatia



Left to right: Christoph Riedmann, Tat Lim, Joe Tirado, Suzana Kolesar, Ines Medić, Delphine Borne, Brian Hutchinson and Maria Beatriz Burghetto

**The topic of this year’s** conference of the Croatian Chamber of Trades and Crafts (HOK) was ADR and it was sponsored by the President of the Republic of Croatia, **Kolinda Grabar-Kitarović**, and Croatia’s Ministry of Economy, Entrepreneurship and Crafts. The conference was inaugurated by the President of the Supreme Court of the Republic of Croatia, **Duro Sessa**, who emphasized the advantages of ADR and also its role in strengthening the rule of law and legal certainty in Croatia. After a welcome speech by the HOK’s Vice President, various government officials expressed their support for mediation. The conference was chaired by **Ines Medić**, Associate Professor at the Faculty of Law of the University of Split, Croatia.

On the first day, among other speakers, **Nina Betteto**, member of the Mediation Working Group of the Council of Europe Committee on the Judiciary, introduced the work of the group and Professor **Brian Hutchin-**

**son**, Associate Professor at the University of Dublin, spoke about mediation as a useful tool in cross-border disputes.

On the second day, **Suzana Kolesar**, Registrar of the HOK’s Court of Honor and the HOK’s Centre for Mediation, and **Delphine Borne** described the EU Commission’s projects in the field of consumer protection. ArbitralWomen Board Member, **Maria Beatriz Burghetto**, spoke about multi-tiered clauses in cross-border transactions, their benefits and drawbacks, and the aspects on which practitioners should focus when drafting this type of clauses. She assessed two examples of such clauses: the Singapore Arb-Med-Arb clause and a real-life clause from an international contract, and concluded that drafters of these clauses must define in a clear, unambiguous manner, the steps to be followed by parties when implementing them; whether the pre-arbitral steps are a condition precedent to the arbitration or whether parties may commence arbitration while attempting an amicable solution to the dispute. Once the mul-

ti-party clause is triggered, practitioners must ensure that the parties have performed all steps required by the multi-tiered clause prior to commencing or resuming arbitration; carefully document the commencement, performance and completion of all pre-arbitral steps and ensure that all claims, including counterclaims, form part of the pre-arbitral steps.

Other speakers included **Joe Tirado**, Partner at Garrigues UK LLP, who spoke about international commercial and investment mediation, **Tat Lim**, partner at Equitas Law LLP, Maxwell Mediators, who introduced the topic of cross-cultural differences between parties in mediation and **Frauke Nitschke**, senior counsel with the World Bank, who participated by video-link and gave an overview of ICSID’s mediation rules in ISDS.

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Submitted by Maria Beatriz Burghetto, ArbitralWomen Board Member, Of-counsel at JA Cremades & partners, Paris, France

# “Inspir-Acción. Mujeres de éxito: del dicho al hecho” (Inspir-Action: Successful women: from words to actions) 24 October 2019, Madrid, Spain



Left to Right: Elena Gutierrez, Ana Ormaechea, Alma Gómez, Cristina Balbás, Cristina Jimenez

**On 24 October 2019 CEA Mujeres**, the female branch of the Spanish Arbitration Club, which has attracted more than 1.000 members from 43 countries, organized a round table in collaboration with Hogan Lovells with the theme “Inspiring by action”. AW Board Member **Elena Gutierrez** (Independent Arbitrator and co-founder of CEA Mujeres) gave some welcoming words on behalf of CEA Mujeres and introduced the speakers. AW members **Deva Villanúa** (Partner at Armesto & Asociados and co-founder of CEA Mujeres) and **Silvia Martinez** (Senior Associate at Hogan Lovells) acted as very active and teasing moderators.

Speakers included **Alma Gómez**, Deputy Director of the legal department of Técnicas Reunidas, **Ana Ormaechea**, Head of Digital Product of Prisa Radio & Founder of Cuonda podcast, **Cristina Balbás**, co-founder of Escuelab, and **Cristina Jiménez**, president of FIDE.

These female leaders from very diverse fields (media, engineering, science, education and law) shared stories of their journey to the top, including their successes, failures and drivers. They also debated on the importance of having role models and mentors, and even dared to give their forecast on the key challenges our society will be facing

in the next 5/10 years.

The event gathered more than 80 practitioners, including lawyers, arbitrators, academics, and in-house lawyers.

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Submitted by Elena Gutierrez, Independent Arbitrator and Arbitral Women Director (Paris, France)



Left to Right: Filipa Cansado Carvalho, Elena Gutierrez, Ana Ormaechea, Alma Gómez, Cristina Balbás, Cristina Jimenez, Silvia Martinez, Deva Villanúa

## Fifth Sarajevo Arbitration Day, 24 October 2019, Sarajevo, Bosnia & Herzegovina



Mirèze Philippe

**Nevena Jevremovic**, Manager, Corporate Learning at IACCM, and founder of Association Arbitri, organised another successful edition of the “Sarajevo Arbitration Days” gathering a hundred participants. The keynote speech given by **Mirèze Philippe**, Special Counsel, ICC, and ArbitralWomen co-founder, addressed the issue of diversity. One of the 14 citations used by Google on the International Women’s Day this year, she said, particularly resonated with her and ties in with all the efforts she has been undertaking in the past 25 years: “I matter. I matter equally. Not if only, not as long as.

I matter. Full stop!” The author of the citation is **Chimamanda Adichie**, a Nigerian novel writer. “Every woman matters just like every human being matters”, she added. Why we are still addressing diversity in 2019 and do diversity and inclusion matter? She presented the work of some of the initiatives that contributed to close some gender gap, such as ArbitralWomen and the Pledge, and said that every initiative matters. She went on discussing how bias invades our lives and decision-making processes, before addressing ways to recognise our biases and try to minimise them. (Her speech will be part of a paper to be published).

On the first panel moderated by **Benjamin Davis**, professor of law, University of Toledo, the panellists **Filip Boras**, partner, Baker McKenzie, **Dina Durakovic**, partner, DMB Legal, and **Ileana Smeureanu**, ArbitralWomen Board member, lawyer, Jones Day, shared their experiences of the various biases they were confronted with in their career.

The next panels enlightened the audience about local practices, tendencies and difficulties, first in Concession Agreements in BiH Legal Practice, and second in FIDIC Contracts, Law & Practice.

After the closing remarks by Ms Jevremovic, the speakers were invited to an excellent dinner in a trendy restaurant, The Four Rooms of Mrs Safija. Everyone looked forward to the 6<sup>th</sup> edition. (A full report will be published on the website of the association on [www.associationarbitri.com](http://www.associationarbitri.com)).

Submitted by Mirèze Philippe, Co-founder ArbitralWomen, Special Counsel, ICC International Court of Arbitration. Photo: Association ARBITRI

## Perception v. Reality: Inclusion, Transparency and Efficiency in Arbitration, 29 October 2019, Houston, Texas, USA

On 29 October 2019, the Houston office of Locke LLP, with the support of The Pledge, hosted a seminar entitled “*Perception v. Reality: Inclusion, Transparency and Efficiency in Arbitration.*” The panel was moderated by ArbitralWomen member **Ann Ryan Robertson**, Fellow and Vice President, CI Arb. Panelists included **Olivier P. Andre**, Senior Vice President, International, CPR: International Institute for Conflict Preventions and Resolution, **Yanett Quiroz**, Director, International Centre for Dispute Resolution and **Marcela Berdion-**



Left to Right: Ann Ryan Robertson, Marcela Berdion-Straub, Olivier P. Andre and Yanett Quiroz

**Straub**, Lead Counsel-Litigation, TOTAL.

Ms. Robertson began by giving an overview of The Pledge and its goals and urging those who had not yet signed the Pledge to do so. Following these introductory remarks, Ms. Robertson utilized results from the Queen Mary Survey to inform the audience of general perceptions. The first issue discussed by the panel was inclusion and more particularly the actions being taken by the institutions to foster diversity and inclusion. The issue of transparency fo-

cused not only on what institutions are doing to promote transparency but also on whether more transparency is wanted and needed by end users. The final topic, efficiency, was an examination of what the institutions are doing to promote efficiency, including their oversight of arbitrators and the revisions to their rules. Also examined was whether end-users are proponents of techniques such as summary judgment in arbitration.

The conclusions reached were that the institutions are striving to do their

part to promote inclusion, transparency and efficiency but that for these three elements to be completely fulfilled will require the concerted effort of outside counsel, in-house counsel, end users, as well as the institutions. While gains have been made, there is much left to accomplish.

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Submitted by Ann Ryan Robertson, ArbitralWomen Member and Vice-President of the Chartered Institute of Arbitrators (CI Arb)

## Young AW Practitioners event | Arbitral Parents: Managing Parenthood in the context of an International Practice, 30 October 2019, Milan, Italy



Left to Right: Federica Bocci, Valentine Chessa, Giulio Giannini, Anna Biasiolo, Marco de Benito, Carmen Martínez López and Chiara Garofoli

**On 30 October 2019** the Milan office of DLA Piper, with the support of CEA Mujeres (Club Español de Arbitraje), hosted a YAWP – Young ArbitralWomen Practitioners - event concerning the challenges that arbitration practitioners (men and women) face when trying to balance parenthood and an international practice.

**Valentine Chessa**, Partner at Castaldi Partners and ArbitralWomen Board Member, moderated the lively discussion amongst the panellists, including both arbitration practitioners, such as **Anna Biasiolo**, Associate at BonelliErede, ArbitralWomen member, **Marco de Benito**, Founding Partner of Estudio de Arbitraje, **Carmen Martínez Lopez**, Partner

at Three Crowns, also ArbitralWomen member, and in-house counsel, such as **Giulio Giannini**, DS Smith and **Chiara Garofoli**, Google.

The panellists' ability to share very personal and emotional insights triggered overwhelming participation from the audience, which resulted in an invaluable exchange of opinions and suggestions.

Although there is no magic formula and certainly not a one-fit for all solution, the discussion landed on a very reasonable driver to successfully balance parenthood (or, more in general, private life) with a successful arbitration practice, and that is Flexibility, Flexibility, Flexibility!

The audience praised this kind of event, which is quite unusual in Italy, and suggested that more senior management should also be involved in such discussions. We have accepted this challenge, so... stay tuned!

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Submitted by the event co-organisers: Federica Bocci, Lead Lawyer at DLA Piper in Milan (Italy) and member of ArbitralWomen, and Annabelle Möckesch, Senior Associate at Schellenberg Wittmer in Zurich (Switzerland), member of the YAWP Steering Committee



## 2019 International ODR Forum, Measures and Metrics, Boldly Going Where the Numbers Lead, 28–30 October 2019, Williamsburg, Virginia (USA)



Group photo with the speakers at the door of the Colonial Williamsburg Courthouse

**The ODR Forum 2019 in** Williamsburg (Virginia, USA) which was held from 28 to 30 October 2019 was jointly organised by the National Center for Technology & Dispute Resolution (NCTDR) and the National Center for State Courts (NCSC). It was the biggest annual forum attended by approximately 300 participants from nearly 20 countries. **Paul Embley** from NCSC succeeded to gather ODR experts and non-experts from all profiles, including state courts, ODR providers, dispute resolution organisations and universities, and also people participating for the first time in these forums. In addition to being a successful event, all panels were extremely interesting. The speakers' papers will be published in the International Journal of Online Dispute Resolution. Nearly half of the speakers were women.

The most striking novelty at this year's edition was the massive participation from practitioners coming from state courts in the United States; several courts are bringing justice online and these efforts are certainly driving change in public justice. The ODR Forums started

focusing more particularly on technology in state courts since 2016 at the ODR Forum in The Hague, and continued to do so at the ODR Forum in Paris in 2017, then in Liverpool in 2018 and this year in Williamsburg. The latter Forum was the most important one in addressing the experience of state courts which offer access to justice online. Some courts are inspiring models which may convince other courts to invest in bringing justice online.

The keynote of **Justice Constandinos Himones** from Utah Supreme Court was particularly impressive. If anyone in the room still had doubts about the benefits of giving access to courts online, Judge Himones certainly succeeded to remove such doubts. His inspiring words gave the tone for the rest of the conference.

The various panels presented how public and private initiatives have brought justice online in some jurisdictions. Current online services, ongoing and future initiatives discussed demonstrated not only that ODR is gaining field, but most importantly that stakeholders who may not yet be involved in bringing justice online are realising that they must invest in ODR now before they get

outdated, lose business and lose the objective of access to justice. Ethics and standards have been important matters discussed at almost every ODR Forum in the recent years.

"What does it take to bring justice online?" was the topic discussed by **Mirèze Philippe**, Special Counsel, ICC, and ArbitralWomen co-founder. She addressed the issue of denial of justice as millions of small claims remain unsettled and said that denial may be effectively cured through ODR, but that online justice is lagging behind. She explained the undeniable advantages of ODR before discussing the lessons to learn from past experiences which may help avoiding future recurring mistakes. She added that digitalising courts is undisputably a progress and that their success will increase users' confidence in public and private justice conducted online.

The three-day intensive programme ended with a visit of the charming Colonial Williamsburg.

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Submitted by Mirèze Philippe, Co-founder ArbitralWomen, Special Counsel, ICC International Court of Arbitration

# 2020 AW Moot Funding Programme Campaign

Each year ArbitralWomen provides support to student teams to participate in dispute resolution competitions by paying the team's registration fee. ArbitralWomen is proud to support teams competing in the Vis or Vis East International Arbitration Moots and other international law and ADR moot competitions.

Moot competitions provide law students with an invaluable opportunity to effectively handle a major

international arbitration. Many ArbitralWomen members assist moot teams as coaches in their jurisdiction, and/or sit as arbitrators in the competitions and are invariably impressed by the quality of the students' work and performance. You can find **first-hand reports from the 2019 moot teams** whose financial sponsorship was provided or coordinated by ArbitralWomen in our [July 2019 ArbitralWomen Newsletter](#).

**ArbitralWomen's successful moot funding programme would not be possible without the sponsorship of its partners! We need your support!**

ArbitralWomen has already received students' application for the 2020 ArbitralWomen funding programme. Please encourage your colleagues and other contacts to

support young future practitioners from all over the world in their participation in enriching international arbitration moot competitions.

**You may contact Affef Ben Mansour and Juliette Fortin at [moot@arbitralwomen.org](mailto:moot@arbitralwomen.org) for more information on how to support the 2020 Moot Funding Programme.**

## ArbitralWomen is celebrating the 10<sup>th</sup> anniversary of its Moot Funding Programme developed by Louise Barrington and in effect since 2009

**As the founder and director of Vis East Moot convening in Hong Kong, the sister of the Vis International Arbitration Moot taking place in Vienna, Louise had been confronted with teams who did not have the chance to compete due to lack of funds, material or coaches. She thus suggested that AW provide assistance to teams in any possible way to enable talented young people to compete.**

Where possible the funds are contributed by firms and occasionally by individuals, so that the cost does not become too much of a burden to ArbitralWomen itself. The more firms and individuals are willing to provide sponsorship the more teams can be funded, and there are excellent public relations benefits to the sponsors. Each sponsor's donation carries the donor's title on the award, and sponsors may be introduced to the teams they funded if

they wish, or even invite one or more of these students to serve as trainees in their firm. It is a win/win situation all around, as many teams would not afford to participate without this assistance. Although the support is limited to payment of the registration fee, there is nothing to prevent sponsors from providing additional assistance to the teams if they should so desire.

The Vis and other moots are an extremely valuable experience for law

students, as they have the opportunity to play a role it would otherwise take decades of practice to achieve. The students work hard in preparing their memorials and arguments, and perform spectacularly. In March 2017, one of the sponsored teams, the West Bengal National University from India, came first in the Vis East Moot, a huge success for the university. AW was honoured to have contributed to the team's victory.

From 2009 to 2014 AW funded 3 to 4 teams each year. From 2015 to 2017, AW succeeded to fund 5 to 8 teams, and in 2018 the number rose to 10 teams.

The support of a higher number of moot teams was achieved thanks to generous sponsors.

Some testimonials from teams supported confirms the importance of continuing such programme.

## Testimonials from teams supported

*“You believed in us and encouraged us. Thanks to your support, we were strongly inspired to complete our memoranda and to participate in the Moot. We consider this to be a miracle and we worked hard to show our appreciation...”*

*“Thank you for contributing to the realization of our opportunity to compete against big names and in front of eminent law practitioners, so that our national flag waved at the event, so that we come to realize that coming from a less-developed nation does not necessarily make us any less competent. That, perhaps, is the biggest and most meaningful souvenir to take away.”*

*“Our participation in the Hong Kong 7th Vis Moot turned out to be an unforgettable memory to all members of the team. In addition, we made friends and learned about other cultures. The Moot was a once-in-a-lifetime event for us. With the support of all those who helped, they made our dream come true.”*

*“Participating in the Moot was an invaluable experience. The Moot was the best place to learn the practice of international commercial arbitration and the art of advocacy, skills which we would never have been able to get from in-class learning. Throughout the tough oral rounds, we learned how to improve ourselves, address every question of the arbitrators, and develop teamwork. We had a great time in Vienna and we were happy to live this experience. It was rich on the academic level, the social events, and the people we met. We now have friends from all over the world.”*

*“It was a tremendous educational event, a unique experience, and an occasion to see the professional world before graduating. We discovered a new world, as we made contacts with very impressive people.”*

*“Thank you so much! None of this would have been possible without the support extended by ArbitralWomen. We had been turned down by so many firms in India and our only hope for any help was your organization. We hope to continue taking women ahead in the field in the future as well.”*

*“With every small step, we used to be confident about our preparation, but doubtful about the enormous finances to cover. Within this conflict came a huge blessing for us from ArbitralWomen”*

*“Very close to when registration fee was due, we had not yet been able to get the money to pay for it, which caused us a lot of additional worry. Thus, the economic help granted to us to cover those costs, took a lot of weight off our shoulders and gave us an additional impulse to keep moving forward. In a way, ArbitralWomen made it possible for us to officially embark on this unforgettable journey, which changed our lives forever and promoted the participation of five women on this important academic event in the realm of international commercial arbitration.”*

*“It was not a light feeling to know that the financial problem could only be resolved a few months before the actual competition. And at the same time, it was quite distracting for us to focus on researching while having to save up for the competition. In fact, we all took different part-time jobs to make some minor savings. Luckily, we were selected to receive the funding from a law firm to cover our registration fee. That was genuinely encouraging for us to know that a big firm saw our potential, our need and was willing to help.”*

## SPEAKING AT AN EVENT?

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

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

- Title of event or proposed event
- Date and time
- Names of ArbitralWomen members speaking at the event or who are potential speakers
- Venue
- Flyer or draft flyer which must be approved 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.**

### Social Media

Follow us on Twitter [@ArbitralWomen](https://twitter.com/ArbitralWomen) and our LinkedIn page: [www.linkedin.com/company/arbitralwomen/](http://www.linkedin.com/company/arbitralwomen/)

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## ArbitralWomen Individual & Corporate Membership

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



The many benefits of ArbitralWomen membership are namely:

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

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

**Individual Membership:** 150 Euros.

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

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

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

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



Do not hesitate to contact [membership@arbitralwomen.org](mailto:membership@arbitralwomen.org), we would be happy to answer any questions.