MEDIATION
Learning to listen

WHAT DIVERSITY MEANS FOR OUR PROFESSION

SCOTUS AND THE NEW YORK CONVENTION

CIArb
evolving to resolve

THE Resolver

SPRING 2021 CIARB.ORG

ACCESS TO JUSTICE

COVID-19 and dispute resolution

CONTACTS

CIArb
evolving to resolve

Chartered Institute of Arbitrators
12 Bloomsbury Square,
London WC1A 2LP, UK
T: +44 (0)20 7421 7444
E: info@ciarb.org W: ciarb.org
Membership
T: +44 (0)20 7421 7447
E: memberservices@ciarb.org
Marketing and Communications
T: +44 (0)20 7421 7481
E: marketing@ciarb.org
Education and Training
T: +44 (0)20 7421 7439
E: education@ciarb.org
Events
T: +44 (0)20 7421 7427
E: events@ciarb.org
Venue and Facilities
T: +44 (0)20 7421 7423
E: 12bsq@ciarb.org
Governance and Legal Services
T: +44 (0)20 7421 7438
E: legal@ciarb.org
Dispute Appointment Service
T: +44 (0)20 7421 7444
E: das@ciarb.org

THINK

Editor
Robert Outram
Managing Editor
Mike Hine
Designer
Amanda Richardson
Client Engagement Director
Kieran Paul
kieran.paul@thinkpublishing.co.uk
Executive Director
John Innes
john.innes@thinkpublishing.co.uk

CIArb's reach is truly international

Phileas Fogg encircled the globe in 80 days. Today, we can go around the world virtually in minutes. Although countries' borders are still closed, CIArb's activities have blanketed the globe as it continues its role as an inclusive thought leader.

Beginning in January, for a period of 11 weeks, CIArb's Young Members Group presented its World Tour, 'Arbitration and Mediation as a Global Force for Good', offering a series of webinars highlighting recent developments and trends.

In the wake of Halliburton v Chubb, in February, CIArb hosted a panel discussion on the long-term implications of this important decision.

March was an especially busy month. CIArb organised its first International Student Open Day and launched the innovative ADR Student Experience Programme to assist students in deciding if a career in ADR is right for them.

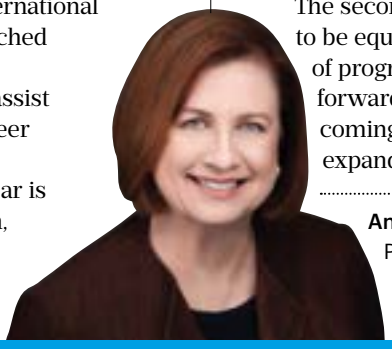
The first quarter of any year is mooting season. Once again, CIArb sponsored not only the Willem C. Vis Moot, but also, in conjunction with Fox Williams, a virtual pre-moot. More than 100 students from 15 countries obtained first-hand experience in preparation for the Vis Moot. For those CIArb members who volunteered their time, thank you.

On 8 March, for International Women's Day, CIArb hosted a webinar featuring a group of female CIArb members from around the world, who emphasised the continuing need for greater gender and geographical diversity in ADR.

CIArb also continued its participation in the UNCITRAL working groups focused on ISDS and expedited arbitration.

Finally, I would like to recognise the many regional programmes offered by our membership, which have had an unprecedented global reach.

The second quarter of 2021 promises to be equally busy, with a vast array of programmes and initiatives. I look forward to 'seeing' many of you in the coming months as CIArb continues expanding its worldwide influence.



Ann Ryan Robertson C.Arb FCIArb
President, CIArb
arobertson@lockelord.com

INSIDE THIS ISSUE

The opener

Virtual Diploma in Commercial Arbitration 'a success'

Fahira Brodlija
Open Regional Fund for South-East Europe – Legal Reform, Country Coordinator

Dr Kabir Duggal FCIArb
Senior International Arbitration Advisor, Arnold & Porter

Athina Fouchard MCIArb
Counsel, Ligitation Group, Eversheds

Ndanga Kamau
Founder, Ndanga Kamau Law

Abayomi Okubote MCIArb
Senior Associate, Olaniwun Ajayi

Amr Omran
Senior Associate, Freshfields Bruckhaus Deringer LLP

Following the first-ever virtual Diploma in International Commercial Arbitration, held in September 2020, another virtual programme was successfully held in March 2021. CIArb would like to thank the course director, Professor Dr Mohamed Abdel Wahab MCIArb, the Faculty and all participants.

The Diploma in International Commercial Arbitration is one of CIArb's leading membership training programmes, normally delivered in the heart of Oxford. For more than 20 years, it has provided practising lawyers and other professionals who are familiar with legal reasoning and are involved in arbitration (domestic or international) with the opportunity to undertake training and assessments that may make them eligible for peer interview for Fellowship of CIArb (FCIArb). The Diploma is delivered by highly experienced and distinguished tutors and involves a combination of lectures, seminars and interactive sessions.

For the virtual programme in March, 25 candidates from 17 countries enrolled on the Diploma.

COURSE DIRECTOR
Professor Dr Mohamed S Abdel Wahab MCIArb
Founding Partner & Head of International Arbitration, Construction and Energy, Zulficar& Partners

DIPLOMA KEYNOTE SPEAKER
Professor Gary Born
Chair, International Arbitration Practice Group, Wilmer Cutler Pickering Hale and Dorr LLP

The next virtual Diploma in International Commercial Arbitration is scheduled for September 2021. For more information, please contact Education & Training at +44 (0)20 7421 7439 or by emailing education@ciarb.org

INTERNATIONAL WOMEN'S DAY LECTURE

Boldly going towards new gender diversity frontiers

CIArb celebrated International Women's Day 2021 on 8 March with its annual Lecture, delivered by Amanda J Lee FCIArb, following introductory remarks by CIArb President Ann Ryan Robertson C.Arb FCIArb and CIArb Trustee Lucy Greenwood C.Arb FCIArb

Star Trek's creators, *writes Amanda J Lee FCIArb*, dared to imagine a future in which gender and race were non-issues – a future in which anyone could take their place on the bridge and reach (for) the stars. To what extent is that future within our grasp?

In recognition of this year's International Women's Day theme, 'Choose to Challenge', I'd like to focus on four key challenges for the international arbitration community to address, and explore potential solutions.

1. RESIST COMPLACENCY AND POLITELY QUESTION THOSE WHO DO NOT

Hard-won progress made to date must not be lost due to complacency, even during a pandemic. With so many women operating in the field, there is no aspect of international arbitration law, practice or procedure on which at least one woman cannot be found to speak with expertise.

Organisations and firms involved in event planning, particularly those who have signed the Equal Representation in Arbitration Pledge and committed to take reasonable steps to ensure that conference panels include a fair representation of women, must remember that diversity is equally important for virtual events.

Male allies, particularly at a senior level, have an indispensable role to play. By agreeing to speak only at events that take gender diversity into account, for example, such allies can inspire positive change.


Amanda J Lee FCIArb


Lucy Greenwood C.Arb FCIArb

2. DIVERSIFY YOUR DIVERSITY – WOMEN ARE MORE THAN THEIR GENDER

We are all so much more than our gender identity. When we recruit, identify names of arbitrators to include on lists for appointment, select potential panellists for our events or even allocate work, affinity bias may come into play. We must better embrace and celebrate intersectionality. To be legitimate, our initiatives, particularly those focusing on gender diversity, must include the voices of women from across the globe.

It is no coincidence that many of the same women regularly receive appointments and speaking engagements. By celebrating and sharing information about talented women in our field who are diverse by virtue of factors other than gender, we do two things: we help to tackle the lack of gender diversity on tribunals by raising awareness of talented arbitrators, wherever they are based; and we promote role models for the next generation of female practitioners.

3. MAKE INTERNATIONAL ARBITRATION MORE ACCESSIBLE

We must have the courage to make our field more accessible to new entrants. Our field is competitive, and there are understandably high barriers to entry, with many entrants expected to have obtained an LLM, participated in international mooting competitions and completed unpaid or poorly paid internships.

Research has consistently demonstrated that race, ethnicity and gender are closely intertwined with socioeconomic factors. Unpaid and underpaid internships entrench existing inequalities. The burden of unpaid labour already often falls disproportionately on women, with many taking on the lion's share of caring and housekeeping responsibilities.

A roadmap for new entrants that is heavily and increasingly weighted in favour of those who come from wealthy backgrounds or, at the very least, from developed jurisdictions does not allow women – or men – to compete on a level playing field.

By continuing to offer paid virtual internships and facilitating virtual moot participation post-pandemic, by earmarking funding and creating new scholarships, and by recognising other methods of acquiring academic knowledge, we can make the field more accessible.

4. BETTER SUPPORT EACH OTHER AND REJECT GENDER STEREOTYPES

The counsel of today are the arbitrators of tomorrow. We must nurture aspiring female counsel from the beginning of their careers.

Those working in law firms who are responsible for allocating work must ensure that allocation is fair and uninfluenced by unconscious bias. We must scrutinise our promotion processes to make sure that women are not unfairly prejudiced due to judgments about their value being based purely on factors such as face time or billable hours, which may be more challenging for women with caring responsibilities.

Everyone – men and women alike – should serve as a mentor and sponsor for the next generation, providing strong role models from all backgrounds who will promote them, challenge them and give them room to grow.

We must better support each other, celebrate each other's achievements and reject preconceived notions about what a woman can do and should be.

Gender equality is our final frontier and resistance is futile. Together we can ensure that all women can reach the stars.

Amanda J Lee FCIArb sits as an arbitrator in international and domestic arbitration proceedings. Amanda is also the founder of Careers in Arbitration; a Visiting Lecturer at the University of Law, UK; a member of the Board of ArbitralWomen and the Global Advisory Board of ICDR Y&I; and an Ambassador for Racial Equality for Arbitration Lawyers (R.E.A.L) and the Alliance for Equality in Dispute Resolution.

The 2021 Vis Moot final round (clockwise, from top left): Patrizia Netal, Director, Vis Moot; the Singapore Management University team; the Bucerius team; Ann Ryan Robertson, CIArb President; Gabrielle Nater-Bass, panel chair; Professor Dr Lauro Gama Junior, panel member

VIS MOOT

Bucerius wins second virtual moot

The 28th edition of the Willem C Vis International Commercial Arbitration Moot marked the second time the competition has been held virtually, in response to travel restrictions during the COVID-19 pandemic. The platform for the hearings was provided by the International Dispute Resolution Centre in London.

The problem this year examined the procedural issues of joining non-signatory parties to a dispute and conducting remote proceedings, and substantive issues surrounding the applicability of the Convention for the International Sale of Goods to mixed contracts involving the sale of licensing and intellectual property rights, with a fact pattern centring on the development and production of a vaccine for COVID-19.

The final round featured a panel of arbitrators chaired by Gabrielle Nater-Bass, with CIArb President Ann Ryan Robertson and Professor Dr Lauro Gama Junior.

THE WINNERS

The schools in the final round were Singapore Management University and Bucerius Law School (from Hamburg, Germany), with Bucerius prevailing as champions and overall winners of the Eric L Bergsten Award. Singapore Management University were runners-up, and third place was shared by the National Law University, Delhi, and the University of Ottawa.

The Martin Domke Award for Best Individual Oralist went to Francis Lake, BPP Law School. Runners-up (tied) were Jonas Klein, Bucerius Law School, and Madeleine Bosler, University of Sydney; third place went to Efat Elsherif, McGill University.

The Michael L. Sher Award for the Spirit of the Moot went to Eduardo Mondlane University, Mozambique.

There were 387 teams participating from around the world. It was particularly noteworthy that the virtual format allowed a record number of teams from Africa to participate this year, since it eliminated visa requirements and travel costs.

The virtual format also facilitated coaching support for these teams from experienced practitioners worldwide, something teams from emerging regions often struggle to find, even if funding is available.

This was also the first year that a team from Sub-Saharan Africa – Strathmore University, Kenya – was selected as one of the 64 teams to participate in the elimination rounds.

60-SECOND INTERVIEW

Hon Lady Justice Joyce Aluoch EBS CBS(Rtd) MCIArb

The Hon Lady Justice Joyce Aluoch talks about her career in dispute resolution

What led you to become involved with ADR?
Having spent over 40 years resolving disputes as a Judge, I thought the most natural progression on retirement was to be an ADR practitioner, so I trained as a mediator and arbitrator. I qualified as a Certified International Mediator (IMI); Certified Advanced Mediator and Chartered Mediator (MTI East Africa); Accredited Mediator (CEDR), London; and Member of the Chartered Institute of Arbitrators (MCIArb), London and Kenya branches.

What is the biggest challenge in your role?
As my practice is mostly in mediation, the biggest challenge is the lack of knowledge of the mediation process among many disputants and some legal practitioners. This results in few people opting for mediation as a way of resolving their disputes. I would therefore call for a public awareness campaign and training for lawyers in mediation.

And what is the most satisfying aspect of it?
The most satisfying aspect of mediation is when I facilitate the disputants' conversations and discussions until they reach a settlement agreement of their own; sign it, thus making it formal and binding; then shake hands!

How important is ADR, particularly in Africa?
ADR is important as a method of resolving disputes, especially in Africa, where many people cannot afford the cost of court litigation. In Kenya, for example, the current Constitution 2010, at Article 159(2)(c), mandates the courts to promote ADR mechanisms, including conciliation, mediation, arbitration and traditional dispute resolution mechanisms, subject to the Bill of Rights, justice and morality, the Constitution and written law.

Traditional dispute resolution (Alternative Justice System) was launched by the Chief Justice in August 2020. Court-annexed mediation was launched as a pilot project in 2016, and became a permanent programme of the judiciary in 2017. These developments have promoted resolution of disputes in Kenya.

What advice do you wish you had been given early in your career?
I believe I did well to pursue a career in the judiciary, and on the bench, for over 40 years before turning to ADR. That would have been good advice!

The Hon Lady Justice Joyce Aluoch EBS CBS(Rtd) MCIArb is a former Judge and First Vice President, International Criminal Court, at the Hague. Prior to that, she was a Court of Appeal and High Court Judge in Kenya, being the second woman in the country to attain the position. She will deliver the 11th Roebuck Lecture for CIArb on 10 June.

EVENTS

Roebuck Lecture 2021

The theme of this year's Roebuck Lecture is the impact mediation will have on the future of international arbitration. The Lecture will be delivered by the Hon Lady Justice Joyce Aluoch EBS CBS (Rtd), MCIArb, a former Judge and First Vice-President of the International Criminal Court. She is an active member of CIArb's Kenya and London branches (see 60-second interview, left).

This event will be broadcast live online at 5.00pm BST on Thursday 10 June.

CIArb Mediation Symposium: call for papers

In a new departure for the 14th Annual CIArb Mediation Symposium on 7 October 2021, CIArb is encouraging contributions from mediation researchers and mediation service providers, as well as anyone who is at the forefront of any area of innovative mediation practice. The two streams for the symposium are 'Learning from the Past' and 'Building for the Future', and the deadline for submissions is 31 May 2021.

See **www.ciarb.org** for more details, or contact Education and Training at **mediationsymposium2021@ciarb.org**

London International Disputes Week

CIArb is proud to sponsor London International Disputes Week. Taking place on 10–14 May, the week will feature sessions with leading ADR experts and opportunities to network with international colleagues. The CIArb team will be available to meet in the virtual social lounge and networking sessions (10–13 May), and there will be a fringe event hosted jointly by CIArb's London Branch, Queen Mary University of London and the Young Canadian Arbitration Practitioners on 11 May at 17.30–18.30 UK time (see **ciarb.org/events/preparing-tomorrow-s-disputes-practitioner**). Find out more at **2021.lidw.co.uk**

CAREERS

ADR Student Experience

The CIArb Young Members Group (YMG) has partnered with online resource provider Careers in Arbitration and Forage, a free career education platform, for the launch of the virtual ADR Student Experience Programme, an initiative that provides practical skills and experience in dispute resolution.

The programme is free and can be completed at the student's own pace. It provides not only practical skills and experience, but also opportunities to leverage this experience in interviews. It also helps students decide whether a career in ADR is right for them.

In its first month, the programme attracted more than 2,580 students, and at the time of writing approximately 120 of them have already completed the programme. Two-thirds were women and around 30% were in their final year at university. The five countries most represented were the UK (36%), India (24%), Nigeria (19%), Australia (9%) and South Africa (6%).

The students so far enrolled have rated the programme, on average, 4.63 out of five. Among the participants giving testimonials are:

- Dushinee Maistry (LLM in international business law): "This virtual internship experience has enabled me to analyse and reflect on many issues, starting from the drafting of an arbitration agreement to the beginning of arbitration proceedings."
- Mate Alerić (law): "Intellectually stimulating and a valuable practical programme... many thanks to CIArb; it was a great experience!"
- Amanda Veiga (Universidade Federal de Santa Catarina – law): "The ADR Student Experience Programme was by far one of the most challenging and enlightening experiences I have had in the field of dispute resolution... it was great to see what kind of issues young practitioners face when advising their clients in arbitral proceedings."

ENGAGEMENT

New member panel

As part of our commitment to reach out and engage more with our members, we are excited to establish a Member Insight Panel. Launching in 2021, the panel is a group of members who opt in to take a leading role in shaping CIArb's future initiatives. This will be achieved by utilising our members' expertise and experiences, and by putting your views and insights at the heart of our new strategy.

We will share proposals for new projects and initiatives with the panel to get views and feedback on them while they are at the development stage, such as new training courses and our plans for the website. We will

then use the feedback to make sure we deliver what members want and value.

Registration is invited by 29 May 2021. For further information or to sign up, go online to www.ciarb.org

COMPETITION

Essay prize

Tran Huong of the University of Hertfordshire has been named as the winner of the CIArb East Anglia Branch's first ADR essay competition.

The winner and runners-up were announced by Sir Rupert Jackson QC MCIArb, the overseeing judge for the competition, at a virtual event held on 31 March.

Tran's essay topic was 'The Legitimacy Crisis in Investor-State Dispute Settlement'. Second place went to Sara Kachwalla, with the entries from Iqra Bawany, Anna Kwabena and Alicia Tan coming in at third, fourth and fifth place, respectively.

CAREER DEVELOPMENT

CIArb to launch mentoring pilot

As part of its commitment to providing career development opportunities to under-represented groups, as set out in its Equality, Diversity and Inclusion strategy, in June CIArb is launching a new mentoring programme pilot in partnership with platform provider Mentorloop. The programme will allow CIArb members to link with experienced mentors who can offer guidance and support to meet their specific requirements. It will be available to MCIArb members around the world and across all areas of practice. The scheme is designed to provide members with access to committed and capable mentors who can help them achieve the outcomes they seek from the mentoring relationship.

Mentorloop allows mentees and mentors to match with one another as effectively as possible. The emphasis is on choice and autonomy. Mentees and mentors can self-match based on their self-identified development priorities, or the platform can pair them automatically on the basis of a carefully designed algorithm. The programme is intended to be as flexible as possible and, within certain parameters, participants are free to decide whatever approach works best for them. A call for expressions of interest in being a mentor on the scheme is currently live.

At this pilot stage, the number of participants is limited, and places will be allocated on a first-come, first-served basis. The programme is intended to cater primarily to those from underprivileged backgrounds, so registrations from members from under-represented groups are particularly encouraged.

The mentoring programme is aimed at those from underprivileged backgrounds

SHUTTERSTOCK

If you are interested in using the platform as a mentee, look out for the registration details on CIArb communication channels towards the end of May. For more information, contact Noah Pesci at npesci@ciarb.org

Justice for all

CIArb has a mission to enable and support access to justice, both through and within ADR, says Catherine Dixon

We are operating in an ever more fast-moving and complex world, where business often relies on expediency and specialist expertise to become and remain competitive.

In this environment, where sustaining business relationships is key and resolving concerns quickly and effectively is paramount, the complementary set of processes including (but not limited to) arbitration, mediation and adjudication, collectively known as alternative dispute resolution (ADR), is specifically well-suited to resolve modern-day disputes.

During the pandemic, ADR practitioners have responded quickly and adapted their practice to meet the needs of their clients and, increasingly, to support an overburdened court system. ADR, however, does not only complement national courts in times of distress. ADR practitioners help to resolve disputes and settle conflicts in ways that, in terms of confidentiality, expediency and potentially niche subject matter, are becoming increasingly difficult for the courts to handle through standard litigation.

The use of ADR as a way for parties to seek remedies to injustices is both tried and true. As the commercial dimension of general ADR has steadily increased, it may be easy to forget that the practice of resolving conflicts in a non-litigatory environment grew out of the desire to grant parties access to justice in matters that, for one reason or another, could not be handled by the courts.

The growth of ADR beyond commercial matters has led to the practice being adopted in disputes that, in the past, would have gone down a litigatory route, including – to name just a few – employment, health and sport disputes.

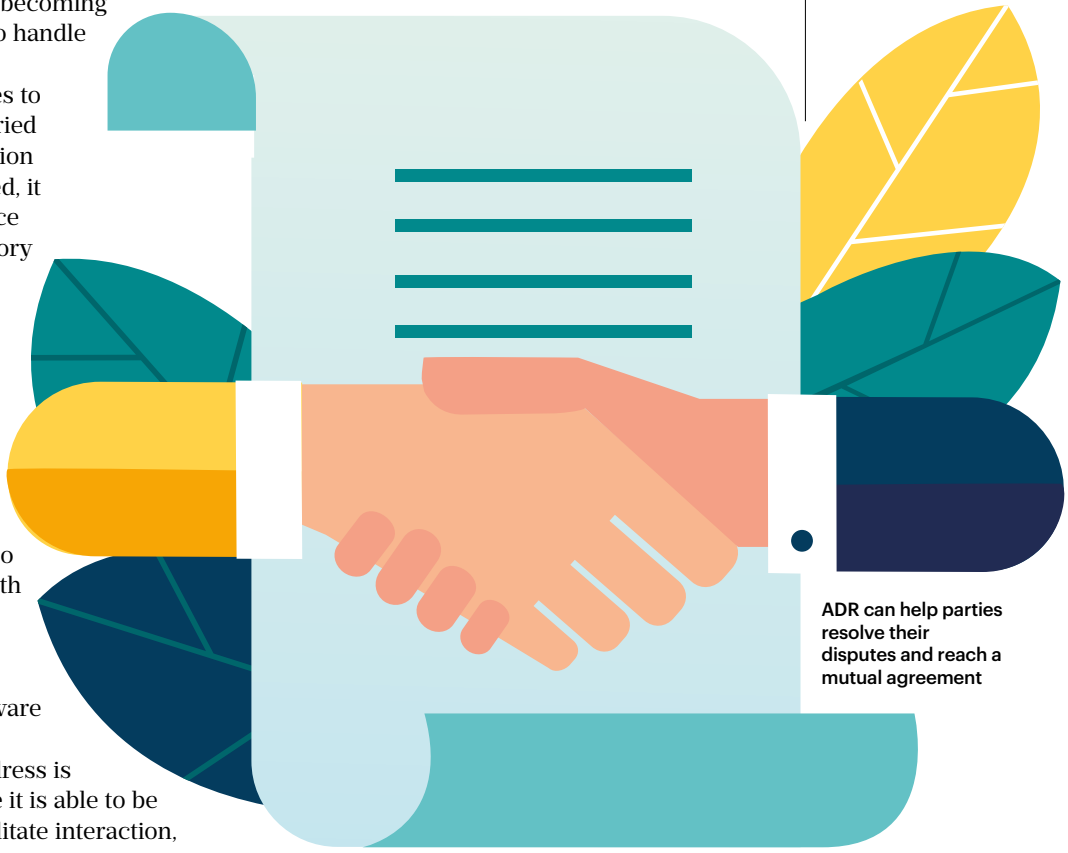
We also know of the increasing amount of unmet legal need, sometimes because people are unaware that their problem requires a legal solution and/or because seeking redress is unaffordable. ADR can help, because it is able to be accessible and affordable. It can facilitate interaction, which enables parties to better understand their respective concerns and positions on contentious issues, allowing them to solve their problems together while maintaining their relationship.

ADR mechanisms are deeply rooted in the principle that those who have suffered a detriment can gain access to redress and justice. From the 18th century onwards, ADR's functional adaptability and legitimate standing in the eyes of the law have governed out-of-court proceedings, from regulating leisure activities to helping to lay the ground for the operation of commerce and industry around the world.

As policies to facilitate dispute resolution become increasingly commonplace, the impact on access to justice is one of the many benefits ADR brings to society and, consequently, to the economy.

In furtherance of CIArb's mission to help parties to a dispute access legal remedies and see justice done, access to justice – not only through ADR, but in ADR – is and will remain a core strategic objective for CIArb in 2021 and beyond.

ABOUT THE AUTHOR
Catherine Dixon is Director General of CIArb. She is a solicitor and accredited mediator.



ADR can help parties resolve their disputes and reach a mutual agreement

Legal separation

The changing relationship between the UK and the EU could mean a greater role for arbitration, argues **Lewis Johnston**

The Trade and Cooperation Agreement (TCA) agreed between the UK and the EU on Christmas Eve last year provided a modicum of certainty about UK–EU relations post–Brexit. Over and above the arrangements that would have prevailed in the event of no deal, the TCA establishes a framework for enabling UK–EU trade in goods (and, to a very limited extent, services) and for mobility provisions under which professionals will be able to cross borders in the course of their work. However, much of how this will work in practice is yet to be clarified. Importantly, the TCA is silent on the issue of judicial cooperation and mutual enforcement of judgments. Details of the future are unclear, but it is likely that the post–Brexit era could see a greater role for arbitration and ADR.

Legal services was one of the few non–goods sectors to have a dedicated section within the TCA, highlighting its importance both as a stand–alone category and in underpinning other areas of the economy. On market access and mobility for legal professionals, the benefits of the agreement are limited. The principle of home title practice is limited by the fact that each of the 27 EU member states can impose their own 'non–conforming measures' to restrict access to their markets.

Further, while there are specific provisions for providing arbitration, mediation and conciliation as 'legal services' under Chapter 5, Section 7 (pages 113–117), they explicitly exclude acting as an arbitrator, conciliator or mediator. These roles are covered by other aspects of the agreement under the category of 'services related to management consulting' in accordance with UN classification codes and are also subject to reservations for individual member states.

It is difficult to ascertain the impact this may have on arbitration and ADR in the UK and EU, not least because the pandemic obscures mobility questions in any case. Practitioners should check the country–specific requirements carefully and monitor any developments.

On the issue of the mutual enforcement of judgments, the UK is now outside the Lugano Convention as of the end of the transition period (31 December 2020), but remains within the 2005 Hague Convention on Choice of Court Agreements. The Hague Convention is narrower in scope than the Lugano Convention, however, covering only instances where an exclusive jurisdiction clause was agreed after the Hague Convention came into force within that jurisdiction. This, coupled with the fact that the UK's application to re–accede to Lugano is still pending as of May 2021 (and has been formally rejected in a non–binding recommendation of the European Commission), means that enforceability is in many cases subject to the national law of individual member states.

Given this is the case, parties may want to consider arbitration as an increasingly convenient mechanism for resolving their disputes, as arbitration is covered by the 1958 New York Convention and the enforceability of arbitral awards remains unaffected by Brexit or the TCA.

ABOUT THE AUTHOR
Lewis Johnston MCIArb is Assistant Director of Policy and External Affairs at CIArb

The UK is now outside the Lugano Convention as of the end of the transition period

YMG goes on virtual tour

Bryan J Branon ACIArb summarises the CIArb Young Members Group's ambitious online world tour programme

As Benjamin Franklin put it: "Out of adversity comes opportunity."

In challenging times, disruption and reinvention are often led by a new generation capable of shaking up the status quo. For a great example of this, look no further than the CIArb Young Members Group (YMG) and affinity young practitioner 'rock stars'.

The next generation of ADR practitioners have framed a global crisis as an opportunity, organising a series of 23 international webinars covering 17 distinct regions throughout the world. The ADR World Tour, 'Arbitration and Mediation as a Global Force for Good', celebrates the resolve of the international ADR community and showcases the ability of arbitrators and mediators to resolve disputes during crises and uncertain times.

The ADR World Tour's Central Organising Group (see box overleaf) put together the programme of 23 webinars in 17 regions. Poll questions were presented at each webinar, to be compiled for an international comparative study at the tour's conclusion.

Each webinar featured at least one practitioner under the age of 40 and at least one woman, and aimed to be 'majority diverse' (including, but not limited to, race, gender, ethnicity, national origin, religion, age, sexual orientation, gender identity, disability or any other unique attribute).

The World Tour began in Asia on 19 January 2021 and was due to conclude on 1 April 2021 in North America. At the time of writing, eight weeks into the programme, the YMG ADR World Tour has attracted 1,192 attendees. The average attendance per webinar is 70 people. In total, 70 of the 140 panellists were women. Sixty-seven out of the 140 panellists were members of CIArb and represented 60 countries. Including online attendees, 60 countries were represented.

Support has come from two global sponsors – the Benjamin N Cardozo School of Law and the Korean Commercial Arbitration Board – as well as an Africa regional sponsor, the Groupement Inter-Patranol Du Cameroun Arbitration Centre (GICAM – Cameroon). The tour has also benefitted from the generosity of 128 regional collaborators.

The next generation of ADR practitioners have framed a global crisis as an opportunity

SHUTTERSTOCK

ABOUT THE AUTHOR

Bryan J Branon ACIArb is Principal at Branon's ADR. He is an international arbitrator, mediator and business development strategist. He has worked for the ADR Centre in Rome, Italy (JAMS International), where he established the Afghanistan Centre for Dispute Resolution, and he was also Director, International and Regional Liaison, at the American Arbitration Association and its International Centre for Dispute Resolution. Bryan is Chair of the Federal Bar Association ADR Section and on the FBA Diversity & Inclusion Standing Committee.

WEEK 1, ASIA (19–20 JANUARY 2021)

Key topics in the Asia week included how Asian countries are responding to the ISDS reform movement, the latest developments in the practice of international mediation with the highlights of the Singapore Convention, and arbitrator selection issues.

Asia at a glance:

- Four webinars over two days, attracting 339 attendees.
- 15 collaborating organisations, three CIArb branches (East Asia, Singapore, Malaysia).
- 18 panellists, seven women and eight members of CIArb.
- Representatives from Singapore, Korea, India, the US, Hong Kong, Brazil, Pakistan, Bangladesh, the Philippines, Japan and Malaysia.

WEEK 2 , CENTRAL AMERICA (26–27 JANUARY)

Central America

During the pandemic, the use of ADR has increased substantially in Central America to promote access

to justice and strengthen the rule of law. The panel, conducted in Spanish, discussed the current situation in litigation, arbitration and ADR. Speakers considered that ADR has been used more frequently in the region to solve disputes. Lastly, the speakers discussed some of the current critiques of investment arbitration.

Central America at a glance:
- One webinar, 29 attendees.
- Five collaborating organisations.
- Five panellists, three women and one member of CIArb.
- Representatives from Costa Rica, Guatemala, Panama and Mexico.

The Caribbean

The Caribbean week focused on the history of ADR in the region, with a particular focus on Haiti and its relationship with the US.

The Caribbean at a glance:
- One webinar, 37 attendees.
- Five collaborating organisations.
- Six panellists, three female and four members of CIArb.

WEEK 3, SOUTH AMERICA (4 FEBRUARY)

This panel, conducted in Spanish, focused on three main topics: litigation and arbitration in the region, and how they have adapted to the pandemic; highlights of ADR, including multi-step clauses, negotiations and mediation; and investment arbitration.

South America at a glance:
- One webinar, 43 attendees.
- Six collaborating organisations.
- Seven panellists, four female, two members of CIArb.
- Representatives from Uruguay, Peru, Colombia, Brazil and Mexico.

WEEK 4, AFRICA (8, 10 & 12 FEBRUARY)

The Africa series spanned eastern, central, north and finally southern Africa, exploring the Africanisation of ADR and the effects of the pandemic.

Africa at a glance:
- Three webinars, three days, three regions, 218 attendees (average 73 attendees per webinar).
- 14 collaborating organisations.
- 16 panellists, eight female, eight members of CIArb.
- Representatives from Uganda, Tanzania, Cameroon, Kenya, South Africa, Mozambique, Senegal, Nigeria, Ivory Coast, Tunisia, Rwanda and Egypt.

WEEK 5, EUROPE (18 FEBRUARY)

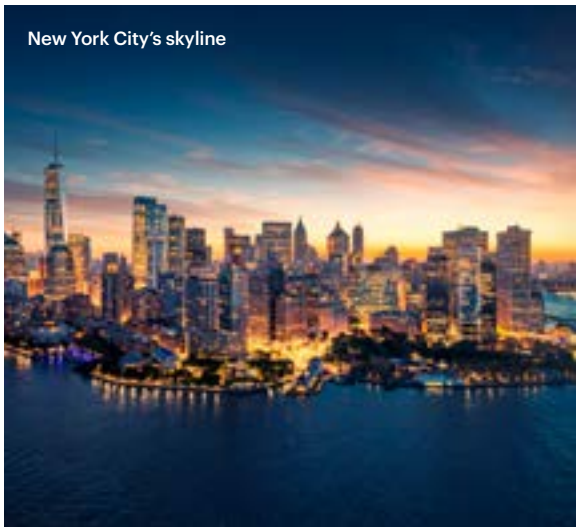
The European leg of the tour spanned Western Europe, with a special focus on France, Germany, Italy, the Netherlands and the UK. Georgios Fasfalis and Laura West introduced the discussion, and Jalal El Ahdab, the keynote speaker, highlighted the remarkable capacity of arbitration and ADR to adapt. The panellists, moderated by Michael McIlwrath, discussed aspects of this, including: the new international chambers of the Paris Court of Appeal and Commercial Court to accommodate Brexit (Catherine Schroeder); arbitration law reform in Italy (Giovanni Minuto); the 2018 revision of DIS Arbitration Rules (Benjamin Lissner); reforms in the Netherlands (Marc Krestin); and ADR and Brexit in the UK (Wendy Miles).

Summing up, Ana Gerdau de Borja Mercereau recalled Jan Paulsson's reference to arbitration as "an enduring social institution", concluding that arbitration and ADR are works in progress, and always will be.

Singapore's business district

Europe at a glance:
- One webinar, one day, 106 attendees.
- 22 collaborating organisations, one CIArb branch (Europe).
- 10 panellists, four female, five members of CIArb.

THE CENTRAL ORGANISING GROUP
- Sara K Aranjo, Al Tamimi & Co, Dubai, United Arab Emirates (Middle East)
- Dr Sylvie Bebohi Ebongo, HBE Avocats, Paris, France and Cameroon (Africa)
- Bryan J Branon ACIArb, Branon's ADR, Burlington, Vermont, US (North America)
- Orlando F Cabrera C FCIArb, Hogan Lovells, Mexico City, Mexico (Central and South America)
- David Chung ACIArb, ABA Section of Dispute Resolution, New York, NY, US (Asia, China and Scandinavia)
- Julia Dreosti, Clifford Chance, Sydney, Australia (Australia and New Zealand)
- Georgios Fasfalis FCIArb, Linklaters, Amsterdam, the Netherlands (Europe)
- Ana Gerdau De Borja Mercereau FCIArb, Derains & Gharavi, Paris, France (Europe, South America)
- Nata Ghibradze, Hogan Lovells, Munich, Germany (Eastern Europe)
- Ross Kartez, Ruskin Moscou Faltischek, PC, New York, NY, US (North America)
- Kirsten Teo MCIArb, De Almeida Pereira, Washington, DC, US (Asia, China and Scandinavia)
- M Imad Khan ACIArb, Winston Strawn, Houston, Texas, US (North America)
- Madeline Kimei MCIArb, iResolve, Dar es Salaam, Tanzania (Africa)
- Anna Kozmenko, Schellenberg Wittmer, Zurich, Switzerland (CIS)
- Ishaan Madaan, Arbinsol, Miami, Florida, US (Asia, India, the Caribbean)
- Soledad Diaz Martinez, FERRERE, Montevideo, Uruguay (South America)
- Harout J Samra FCIArb, DLA Piper, Miami, Florida, US (North America)
- Jaya Sharma FCIArb, Sharma Mediation and Arbitration, Madison, Wisconsin, US (India)
- Sophia Villalta, Batalla, San Jose, Costa Rica (Central America)


New York City's skyline

- Representatives from Lebanon, Brazil, Germany, the Netherlands, New Zealand, Greece, Italy, the UK and the US.

WEEK 6, INDIA (23–24 FEBRUARY)

India's two webinars covered recent trends and developments in international arbitration in India; investment disputes; diversity in commercial dispute resolution; and mediation.

India at a glance:

- Two webinars, two days, 223 attendees (average 111.5 attendees per webinar)
- 14 collaborating organisations.
- 22 panellists, 10 female, seven members of CIArb.
- Representatives from India and the US.

WEEK 7, CHINA AND SCANDINAVIA (2–3 MARCH)

Both the China and Scandinavia webinars were on the common theme 'Arbitrating for Peace – Why Arbitration Still Matters', highlighting the historic relationship between China's CIETAC and Sweden's SCC. Excerpts from the SCC's documentary *The Quiet Triumph* also showed how arbitration contributes to the peaceful resolution of conflicts between nations and facilitates international trade and development.

China and Scandinavia at a glance:

- Two webinars, two days, two regions, 72 attendees (36 attendees per webinar).
- Eight collaborating organisations.
- Nine panellists, six female, three members of CIArb.
- Representatives from China, Sweden, Norway, Singapore and Korea.

WEEK 8, THE MIDDLE EAST AND TURKEY (10–11 MARCH)

Five regional institutions discussed the history, growth and institutional framework of ADR in the Middle East, while the second webinar looked at developments in Turkey.

The Middle East at a glance:

- One webinar, 68 attendees.
- Five collaborating organisations.
- Six panellists, two female, three members of CIArb.
- Representatives from Germany, Bulgaria, the UK, the United Arab Emirates and Egypt.

Turkey at a glance:

- One webinar, 57 attendees.
- Five collaborating organisations.
- Seven panellists, four female, three CIArb members.
- Representatives from Turkey and the United Arab Emirates.

WEEK 9, EASTERN EUROPE AND THE COMMONWEALTH OF INDEPENDENT STATES (CIS) (16–17 MARCH)

Eastern Europe and CIS were due to focus on recent developments and future trends in ADR within both regions.

Eastern Europe at a glance:

- One webinar.
- 12 collaborating organisations.
- Six panellists, three female, one member of CIArb.
- Representatives from Poland, Georgia, Germany, Belarus, Serbia and Lithuania.

CIS at a glance:

- One webinar
- 12 collaborating organisations.
- Seven panellists, three female.
- Representatives from Russia, Uzbekistan, Ukraine, Kazakhstan, Azerbaijan and Armenia.

WEEK 10, AUSTRALIA AND NEW ZEALAND (24–25 MARCH)

Australia and New Zealand were due to focus on trends in ADR and arbitration appeals.

Australia and New Zealand at a glance:

- Two webinars, two regions.
- Seven collaborating organisations, one CIArb branch (Australia).
- 14 panellists, seven female, 10 members of CIArb.
- Representatives from Australia and New Zealand.

WEEK 11, NORTH AMERICA (31 MARCH–1 APRIL)

North America will host a conversation with judges, practitioners and corporate counsel from Canada, Mexico and the US about arbitration as a force for good within the region.

North America at a glance:

- Two webinars.
- 15 collaborating organisations, two CIArb branches (North America and New York).
- 12 panellists, six female, eight members of CIArb.
- Representatives from Mexico, Canada and the US.


Ana Gerdau de Borja Mercereau


Kirsten Teo MCIarb


Marc Krestin


Madeline Kimei MCIArb


Laura West


Orlando F. Cabrera


Ross Kartez


Sylvie Bebohi Ebongo


Wendy Miles

From disruption to normal

Legal technology will be ubiquitous, and eventually you may not even notice it, writes Dr Paresh Kathrani

"The internet will disappear... you won't even sense it. It will be part of your presence all the time."

This quote comes from Eric Schmidt, Executive Chairman of Google USA, talking at a digital economy event in Davos in 2015.

Since then, technology has continued to change the way in which we work. Its 'disruptor' status has been slowly diminishing in many sectors, where it has slowly become the norm. This also applies to the way in which technology has disrupted lives during the pandemic. Technology will become normal.

However, this normal will be smaller, flatter and faster than previous ones. The landscape is different. Videoconferencing and other tools have changed how we work and communicate, and this will have an impact on what people expect of ADR and legal services.

Some of this will be a continuation of what we have already seen. Remote and hybrid hearings are here to stay. We are likely to see these fused even more so with case management systems, so that intelligent machines triage and schedule hearings. This will influence how hearings are managed and is likely to be accompanied by other tools, such as those related to document storage and billing.

This will change how people provide and access services. They will pivot around different cloud-based, mobile and other platforms, increasing the number of solutions that providers can deliver and changing the way they connect with people. This will open up even more opportunities and spaces for alternative legal service providers to innovate and change the way in which legal services are provided, leading in turn to different forms of collaboration.

As a result of the data generated, we will see an increased use of predictive analytics within litigation and ADR. It is likely to become the norm in devising case strategy and advising clients. We are also likely to see more projects where legislatures turn law into code, and this too will change how people access justice.

With the growth of different types of platforms and increasing amounts of data, cybersecurity will become even more important, as will the need for regulation. There will be an increasing need for professional and other types of ethics both within states and internationally as the global community becomes closer. Developments in technology will need to go hand-in-hand with law reform and professional skills and regulation.

Schmidt was referring to the internet when he spoke at Davos. The pandemic has changed our relationship with technology, and his statement could equally apply to many different legal technologies that we will see in the near future, especially in terms of access to legal services. What we expect from technology will change and this will provide the opportunity to think innovatively about legal tech.

Developments in tech will need to go hand-in-hand with law reform and professional skills and regulation

ABOUT THE AUTHOR

Dr Paresh Kathrani is Director of Education and Training at CIArb. He joined CIArb in 2018, having spent more than 15 years in academia as a law lecturer, working on EU-funded projects and researching legal technology and artificial intelligence.

How to... mediate

Dr Isabel Phillips FRSA argues that mediation requires great humility

Ethiopia's contrasting landscapes: from dry lowlands to lush mountains (above)

ABOUT THE AUTHOR

Dr Isabel Phillips FRSA is Head of Mediation Development at CIArb. She is a conflict specialist and mediator in commercial and violent conflict with extensive consultancy experience with commercial organisations, UN agencies, NGOs and UK-based organisations including CEDR and the University of Westminster Law School.

Like a certain privileged section of the world, I sit in my home office staring at my computer screen. I am vaguely conscious of the steam rising from my coffee cup in my peripheral vision. A year ago, I was holding my tiny coffee cup in the chill morning air, while waiting for my *ink'ulal firfir bä injera* – that's Ethiopian scrambled eggs – and shocking my colleagues with my failure to accept that coffee should only be drunk after scrambled eggs and not before. Now I am trapped in a digital square. Thinking.

MEDIATE: A VERB, AN ACTION

What do I do when I mediate? What does a third party do, who neither judges, arbitrates, advises nor teaches? I'm sure that the next sentence should be the punchline of a brilliant joke, of the type I am completely unable to create. The non-witty answer is: work multipartially with the parties on their issues, conflict or dispute to enable them to develop a different and preferred future to the one they are dreading and may seem inevitable.

If I am to do this, then an internal shift must take place. I must kick any superhero complex and recognise I am no saviour. I have not been gifted second sight and this is not my conflict. My future is not at stake. History is littered with 'brilliant' but shredded settlement agreements written by third parties.

I am not simply not a superhero. As mediator, I am blind.

I am the blind invitee to the sighted parties' party. As a mediator, I am blind because I am completely dependent on the parties (and their representatives) for information about their interests, needs, wants,

I must kick any superhero complex and recognise I am no saviour

SHUTTERSTOCK

dreams, hopes, fears and preferred future. But why would they bother telling me? Because I am willing to listen; to listen really carefully. Carefully enough to hear them tell me that the grass is blue and the sky is green and instead of ignoring it, telling them they are wrong or just allowing mental auto-correct to kick in, to ask the question "You mentioned that the sky is green and the grass is blue. Could you tell me a bit more about that?" and to remain genuinely open and interested in the answer.

If this all sounds desperately airy-fairy and idyllic, it's not. Doing this is no more idealistic than trying, as a blind person, to interpret the words of a novice guide. It is no more idealistic than trying, as a sighted person, to find the words to describe the exact shape of an oak leaf to someone who cannot see.

To assist in the development of an alternative, workable, tolerable future for one party is a huge challenge. To do this with multiple parties, often comprised of multiple individual people, is remarkable. It demands persistence, patience, compassion, integrity and respect. It demands building rapport with people you do and don't like. It demands excellent and flexible process management skills. It demands the ability to work with and facilitate the exchange of complex and difficult information without taking ownership of it. Above all, it is a challenge to have the humility to constantly be aware of the limits of one's sight into the lives of others.

Even within mediations, you might see mediators advise or adjudicate. Parties sometimes actively request it. However, rejection of the advice and loss of confidence in the mediator can be the cost of the mediator agreeing to do so. This is unsurprising for two reasons.

The first is that the action of mediating hands the power to make really difficult decisions to the parties. In contrast, the actions of advising, arbitrating or adjudicating all (in)directly assume parties want and need someone else to make a decision for them. In mediation, parties start internally processing decisions that involve letting go, compromising, asserting and sometimes even developing elements of the much-touted 'win-win'. The third party suddenly taking this back or handing power to someone else may not be accepted.

The second reason is that the mediator who suddenly tries to tell (or even just advises) the parties what to do in terms of outcome has incongruously shifted from implicitly admitting their own 'blindness' to asserting authoritative (in)sight. The result is that

It is a challenge to have the humility to constantly be aware of the limits of one's sight into the lives of others

Describing the shape of an oak leaf to someone who has never seen one, and never will, requires a different kind of thinking

the parties must decide whether the change is due to miracle, madness or deception.

We could therefore learn from the many customary systems in which the transition between third parties who mediate, adjudicate and judge is clearly and/or carefully managed. After all, the belief of almost all parties that a third-party win-lose decision-maker will find in their favour ends in disappointment for at least 50 per cent of them.

(IN ORDER) TO MEDIATE, DO:

1. Use mediation; get a mediator in a dispute in which you are a party; it is crucial experience.
2. Understand that to mediate is a physical activity; you can't learn it solely through reading.
3. Get practical mediation training; then get some more.
4. You do not have to be in 'a mediation' to practise mediating.
5. Be a practitioner who self-reflects; own your baggage; get therapy if necessary.
6. Learn to listen, then learn some more; it is an unending challenge.
7. Find something that you like about every person involved in a mediation, however hard.
8. Be patient and hold on to hope, particularly where all hope appears lost.
9. Remember it is not your dispute and some mediations should not settle.
10. Just keep swimming (with thanks to Dory).

I am blind to where you are, what you are doing and what is or isn't acceptable and expected. Blind to whether you, or those you are working with, think coffee before eggs is an acceptable life choice. So please know that you are free to take what you want from what I have said, and to leave the rest behind.

The metaphor of the mediator's blindness arose through the privilege of helping a remarkable friend who gradually went blind. Assisting her led me to see things I had previously ignored, to constantly re-evaluate my perception and to learn to paint word pictures for those who cannot see what I am seeing. This article is dedicated to Gaynor.

March of progress

Robert Outram asks: has the transformation of dispute resolution under COVID-19 taken access to justice forwards or backwards?

The COVID-19 pandemic has had a huge impact on dispute resolution, just as it has on other aspects of life. Practitioners have had to learn to work in ways that have, for many people, represented a step change.

In the long term, however, will the pandemic lead to a permanent change in dispute resolution? And will it help or hinder efforts to widen access to justice, especially for parties that do not have the resources available to large corporations or governments?

COVID-19 has seen conventions overturned across the world

Some have suggested that the initial backlog in civil cases, created as many court proceedings were postponed, could lead to a growth in alternative routes, such as arbitration. If so, does this make dispute resolution more readily available to all parties, or does it create new inequalities?

SHUTTERSTOCK

"In Kenya, ADR mechanisms... are being used to minimise the backlog of disputes"

As to the first point, the picture is mixed. Jonathan Wood MCIArb, Head of International Arbitration, RPC, and Chair of CIArb's Board of Trustees, says that in the jurisdictions in which he is most involved – London, Singapore and Hong Kong – the court system has largely adapted well to the new conditions.

He notes: "I have not seen either arbitration or mediation increase specifically to address the backlog in the courts, inasmuch as there is a backlog due to the pandemic. The civil courts are now working virtually or on a hybrid basis."

He notes, however, that the pandemic has encouraged increased interest in promoting ADR: "CEDR and CIArb promoted a scheme [for online proceedings], and Lawtech UK is working on a project to create an online dispute resolution solution aimed at SMEs seeking to recover late/non-payment. Also, a number of Scottish firms have got together to offer mediation to business in light of the pandemic."

Professor Doug Jones AO, Chartered Arbitrator and Companion of CIArb, is a leading independent international commercial and investor-state arbitrator. He practises in Toronto, London and Sydney, and he is also an International Judge of the Singapore International Commercial Court. He notes: "At the commencement of the COVID-19 crisis, there was an attempt to encourage people to adopt arbitration in order to overcome the issues of court delays. So far, in my experience, I have not seen many examples where people have been prepared to do that."

Professor Jones adds: "The pandemic has probably encouraged mediation, but it has so far not led to more 'ad hoc' arbitration, that is arbitration where that has not already been contractually agreed as the mechanism to resolve disputes."

In many jurisdictions, the courts have transferred many of their processes online with a perhaps surprising degree of success. That is not the case everywhere, however.

ACCELERATING CHANGE

The Hon Justice Edward Torgbor, a specialist international Chartered Arbitrator and mediator based in Nairobi, Kenya, says: "Kenya is in a third wave of the pandemic and in the process of appointing a new Chief Justice. By public notice dated 10 March 2021, the Acting Chief Justice closed down the Family Division of the High Court for a week, due to the high volume of movement of files and staff in the court corridors, and the admission to hospital of three staff members who tested positive for COVID-19. The Family Division is easily the busiest court that conducts court-related arbitration and mediation. There have been no hearings since then, with a consequential toll on access to justice. The effect of COVID-19, as stated, is therefore drastic and continuing."






From top: Professor Doug Jones AO FCIArb; Hon Justice Edward Torgbor; Jonathan Wood MCIArb; Dr David Kariuki Muigua; Dr Leonardo Valladares Pacheco de Oliveira; Dr Sara Hourani

As Dr David Kariuki Muigua C.Arb FCIArb, CIArb Trustee (Africa), notes: "In Kenya, ADR mechanisms, especially arbitration and mediation, are being used extensively to minimise the backlog of disputes."

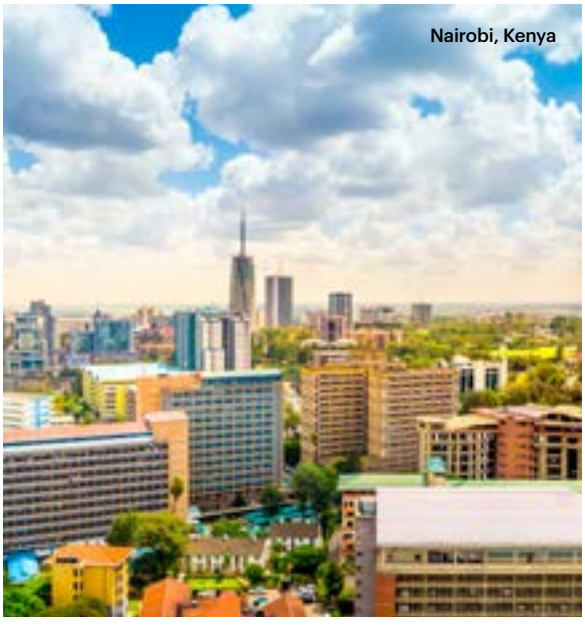
The Kenyan constitution encourages the use of reconciliation, mediation, arbitration and traditional dispute resolution mechanisms and, even before the pandemic, the court-annexed mediation system had been embraced by the judiciary.

Dr Muigua notes: "In July 2020, with the advent of the coronavirus, the Kenyan judiciary adopted a virtual court-annexed mediation process. This was nothing different from the physical process that was being carried out. It even went further to enlist on new matters and, in doing so, ensured that there was no person who was aggrieved and would not have a solution to their issues.

"To oversee the day-to-day management and running of the court-annexed mediation systems, the judiciary has established a mediation secretariat in charge of court-annexed mediations in Kenya."

Meanwhile, across the world, what was previously at best a tentative willingness to experiment with online processes has become a necessity in many jurisdictions.

Dr Sara Hourani, Senior Lecturer in Law at Middlesex University, says: "COVID-19 has accelerated what was happening anyway, although previously some people were opposed to online ADR. The fact that we are now using online arbitration and mediation – especially for low-cost and emergency dispute resolution – will not change [after the pandemic]. It opens the way to greater access to



Nairobi, Kenya

SHUTTERSTOCK

An Uber driver challenged the company's arbitration procedure in a case that went all the way to the Canadian Supreme Court

justice for parties that do not have the same resources as big corporations."

Platforms are emerging to allow disputes involving consumers, or between businesses, to be resolved online, Hourani says. In the US, the National Center for Technology and Dispute Resolution is supporting and sustaining the development of IT applications, institutional resources, and theoretical and applied knowledge for better understanding and managing conflict.

The EU also promotes online dispute resolution and, prior to the pandemic, had already introduced a system to ensure that small claims are filed digitally, making it easier to handle cross-border issues and to deal with disputes online.

Hourani says: "There have been a number of ODR [online dispute resolution] platform launches, especially in the US, Canada and Australia, but it's important to note that these offer the platform and software, not arbitral services. So there are med-arb platforms, but it is [qualified] arbitrators who are appointed."

A LEVEL PLAYING FIELD?

Online processes are generally less expensive – they do not require a physical setting or travel on the part of parties, witnesses or practitioners – so, in theory, the move to more online dispute resolution should 'level the playing field'.

"Some parties have sought to say that they do not have the technology to participate"

In practice, however, might ODR in some cases make access to justice even more unequal? This could be the case if parties to a dispute do not have equal access to technology.

Professor Jones says that, in the kind of disputes he deals with most often, this is not a problem for the parties, but there are some practitioners who have been reluctant to invest sufficiently in the hardware and software required. He believes this is a mistake: "The technology is not expensive. It's a fraction of the cost of a plane fare, and it's a capital investment."

He concedes that location may prove a problem – especially when city-dwelling professionals opt to sit out the pandemic in a remote rural area with patchy broadband. This is certainly a problem for some areas in the US and the UK, for example, and even more so for some less wealthy countries.

Torgbor says: "Online proceedings have restricted and reduced the physical movement of practitioners and clients, thereby saving time and the long waiting periods in court corridors and at hearings. This has not 'levelled the playing field' in dispute resolution, but resulted in greater inequalities due to the unequal access to technology. City dwellers and users of online technology may be expected to fare better in such circumstances in comparison to rural dwellers."

Dr Muigua says: "Currently, online proceedings have led to greater inequalities." This is due, he says, to problems such as: a lack of adequate virtual hearing infrastructure; lack of data protection mechanisms and defences against hacking; and the level of technological illiteracy on the part of some parties and practitioners. He is optimistic, however, that these problems will be solved, adding: "There are brighter days ahead."

MISUSE OF ARBITRATION

Wood believes that the overall impact of the growth of online ADR will be positive, despite any teething troubles. He says: "Some parties have sought to say that they do not have the technology to participate, but that is in the main a hollow plea. Surely most businesses have access to a laptop and therefore to Zoom or Teams? So it is difficult to believe technology renders it [ODR] an unfair advantage to some, but not others. Smartphones give access even in the most remote parts of the world. If anything, ODR should level the playing field, as it does away with the need to travel to hearings."

Dr Leonardo Valladares Pacheco de Oliveira, Lecturer in Law at Royal Holloway, University of London, is co-editor – with Hourani – of a collection of essays, *Access to Justice in Arbitration: Concept, Context and Practice* (Wolters Kluwer, 2020). He says that, while all forms of ADR are intended to promote access to justice, the misuse of arbitration can actually limit it.

In his introductory chapter, he writes: "Access to justice means more than just getting a day in court. It also secures that justice will be an essential part

SHUTTERSTOCK

"It is important that we do not 'flop back' to where we were before"

of the procedure... in this sense, it is not enough to provide means for legal aid, it is also important to have a procedure shaped in a way that mitigates disadvantages between the parties."

Unlike a court-based system, the parties concerned must agree processes for arbitration and mediation, whether prior to the dispute or once it has arisen. Clearly, if there is inequality in bargaining power, then that contract may not be objectively fair.

As Dr de Oliveira puts it: "Arbitration works well if both parties are big players, but it is harder if it's John Doe v Coca-Cola."

'UNCONSCIONABLE'

This was put to the test when one of Uber's drivers challenged the company's arbitration procedure in a case (Heller v Uber Technologies, 2019) that went all the way to the Canadian Supreme Court.

Uber's service agreement was governed by the law of the Netherlands, and provided that employment disputes with the company would be dealt with through mediation via the International Chamber of Commerce (ICC) and, failing that, ICC arbitration. The place of arbitration was Amsterdam, and the minimum cost to initiate the process, C$14,500, was prohibitive for an individual driver, even if it was reasonable for a large company.

The Supreme Court, in its majority decision, ruled that Uber's arbitration clause was "unconscionable" and could not overrule the driver's rights under Canada's statutory employment law.

This example shows that arbitration or mediation, if it is timely and inexpensive, can offer greater access to justice – but unless the process itself is equitable, 'access to justice' is a hollow promise. There is, therefore, a key role for professional bodies, especially CIArb, in ensuring that there is sufficient guidance and standard-setting to ensure that online dispute resolution is handled fairly and effectively. This has already begun, with the publication last year of CIArb's *Guidance Note on Remote Dispute Resolution Proceedings* in response to COVID-19.

The pandemic has changed ADR, and many believe that it has provided important lessons. As Professor Jones puts it: "What we have learned should drive a lot of reforms... it is important that we do not 'flop back' to where we were before."

SHUTTERSTOCK

Why diversity in ADR matters

Dorothy Udeme Ufot SAN FCIArb speaks to *The Resolver* about the state of diversity in ADR, and how to improve it

Dorothy Udeme Ufot SAN FCIArb is the Founding Partner of the law firm that bears her name, in Nigeria. In March, she was a panellist at CIArb's online event for International Women's Day. She spoke with *The Resolver* about her journey and the importance of diversity in ADR.

ADR is very international, but is it diverse? If not, how could it be improved?

Dorothy Udeme Ufot SAN FCIArb (DU): ADR is very international, because the users and providers of ADR services are located in different countries across the world. International arbitration allows parties from different legal, linguistic and cultural backgrounds to resolve their disputes in a final and binding manner.

Although ADR has recorded improvements around the world, it is still far from being diverse. For example, there are still too few women and minority groups in international ADR.

According to F. Peter Phillips in his article 'Diversity in ADR', published in *Dispute Resolution Magazine*, 2009: "Corporate counsel lament that they are being given the same short lists of the same arbitrators and the same mediators (presumably older white men) from which to choose."

In high-end cases, experience and familiarity are the key to neutral selection. In reviewing the lists of arbitrators proposed for selection, parties and their counsel do not ask how many of those proposed are women or minorities; rather, they ask, "What has this person done before?" or "What is this person's track record in big cases?"

While experience and reputation are recommended for neutral selection in high-end cases, this works against the desire to introduce new and unfamiliar faces. It is, however, important to note that ethnicity or gender alone are inappropriate criteria for selection of any arbitrator or other neutral. Phillips advocates the creation of a pool of high-quality female and minority arbitrators and mediators from which corporate counsel and other end users may select neutrals.

Initiatives such as the Equal Representation in Arbitration (ERA) Pledge, which seeks to increase the number of women appointed as arbitrators in order to achieve a fair representation as soon as practically possible, with the ultimate goal of full parity, ought to be commended for their efforts to bridge the gender gap. Other commendable initiatives that seek to tackle the diversity gap include ArbitralWomen, the Africa Promise, Arbitrators of African Descent and Racial Equality for Arbitration Lawyers, to mention a few.

ABOUT THE AUTHOR

Dorothy Udeme Ufot SAN FCIArb is the Founding and Managing Partner of Dorothy Ufot & Co, Nigeria, where she heads the International Arbitration and Litigation departments. She is a Fellow of CIArb and a Chartered Arbitrator; an immediate past Member of the ICC International Court of Arbitration in Paris (2006–2018); and currently a member of the CIMAC Court of Arbitration in Casablanca, Morocco. She is also a Council Member of the ICC Institute of World Business Law and a member of the LCIA, among other reputable international arbitration institutions. Dorothy is on the panel of arbitrators of the AAA/ICDR, ICSID, ICC, KCAB International, CIArb, the HKIAC, DIAC, SIAC, AIAC, the LRCICA, the BAC/BIAC, the EDAC and the Energy Arbitrators List. In 2020, she won the prestigious African Arbitrator of the Year award, organised by the East Africa International Arbitration Conference.

One of the challenges I faced as an aspiring arbitrator was the unwillingness of older male counsel to appear before me

Have you had personal experience of facing challenges and stereotypical thinking in your career?

DU: I have risen to the peak of my career as a Senior Advocate of Nigeria (SAN), the equivalent of the English Queen's Counsel (QC), and a Chartered Arbitrator through hard work and God's grace. I knew from the beginning of my career journey that I was going into male-dominated professions where it would require a lot of hard work to rise to the top. There is no doubt that there were challenges that had to do with being a female, but I was too focused and determined to succeed to be deterred or distracted by stereotypical thinking.

One of the challenges I faced as an aspiring arbitrator was the unwillingness of older male counsel to appear before me. I just carried on with my work regardless of who was appearing or not. What mattered to me were the awards I published, none of which has been set aside by any court to date.

To succeed as a female in a predominantly male profession, particularly ADR:

- You must be determined and assertive.
- You must trust your skills.
- You must cultivate friendships.
- You must find a mentor.
- You must not be afraid to ask for what you want.
- You must be courageous.
- You must be tactful.
- A supportive spouse is obviously an added advantage.

Is there a danger that people can be limited in their thinking regarding which groups 'diversity' applies to?

DU: There is a danger that people can be limited in thinking that 'diversity' applies only to gender diversity. Diversity in ADR means the differences in gender, racial,

SHUTTERSTOCK

We cannot limit our conception of diversity in ADR only to gender diversity

ethnic, socioeconomic, geographic and academic/professional backgrounds of ADR practitioners. It also refers to practitioners with different backgrounds, degrees, social experiences, sexual orientation, religious beliefs, political beliefs, heritage and life experiences.

Diversity in ADR is about what makes each of us unique. We cannot, therefore, limit our conception of diversity in ADR only to gender diversity. Diversity must be interpreted to include various other groups, such as ethnic minorities, racial minorities, female and male practitioners, being aware of skin colour and its social significance.

We must also take into consideration the impact of race and gender-based stereotypes on ADR. For example, when individuals from minority groups are told that they are not expected to perform as well as white people with respect to particular tasks, they tend to do less well, even though members from their groups who are not given such biased information do as well as their white counterparts.

What practical steps can firms or individuals take?

DU: Both individuals and firms have critical roles to play in bridging the diversity gap in ADR. In 2018, the American Bar Association adopted Resolution 105, which stated: "... that the American Bar Association urges providers of domestic and international dispute resolution services to expand their rosters to include minorities, women, persons with disabilities, and persons of differing sexual orientations and gender identities ('diverse neutrals') and to encourage the selection of diverse neutrals; and ... That the American Bar Association urges all users of domestic and international legal and neutral services to select and use diverse neutrals."

Resolution 105 also outlines some key steps that individuals and firms can take, including:

- counsel initiating discussions within their firms regarding the value of diversity;
- clients asking prospective neutral panels about their policies and practices regarding diversity;
- selecting diverse neutrals whenever possible;
- adopting the public diversity pledges available from various institutions, such as the International Institute for Conflict Prevention and Resolution (CPR) and the ERA;
- raising ADR diversity issues at internal and industry association meetings;
- encouraging ADR providers and institutions to increase diversity on their rosters;
- asking ADR providers and institutions to provide lists that reflect their diversity policy;
- asking that providers create opportunities to meet or otherwise become familiar with diverse neutrals on their panels; and lastly
- users of ADR should consider not using neutral panels that fail to adequately address diversity issues.

What should the role of CIArb be?

DU: CIArb is eminently placed to tackle the issue of diversity, and I can confidently say that it is already doing so. For example, CIArb is already helping to increase the number of ADR professionals of colour by offering training.

As an African female arbitration practitioner, I am a proud product of CIArb's training programme. I am also proof that CIArb's pupillage training programme truly works. I am deeply grateful, first to CIArb and then to its former President, my Pupil Master and my bosom friend Mr Anthony Canham CEng FICE FCIArb FBAE. I recall Mr Canham coming to Nigeria on two or three occasions to conduct Fellowship training and examinations as President of CIArb, and – one last time – in his words, "to train the trainers", which included me.

Despite the above, however, many would argue that there are already a great number of diverse, well-experienced and highly qualified professional dispute resolution experts; it's just that they do not get hired!

According to F. Peter Phillips: "... what is not needed is the assumption that women and people of colour need some sort of remediative assistance. What is needed, they say, is work."

Further, CIArb training could be sector driven. For example, CIArb could organise training for the insurance industry. A campaign could be designed in collaboration with a trade association to encourage the use of women and minority arbitrators and mediators within that industry.

Change will certainly come; it is inevitable. There is no doubt that CIArb is committed to promoting diversity within the ADR community. On 8 March

Dorothy Udeme Ufot SAN FCIArb

2021, on International Women's Day, CIArb published a series of short interviews with female arbitration, adjudication and mediation specialists from around the world, including me, with the aim of promoting these practitioners as role models.

CIArb can help by continuing to invite diverse ADR practitioners who are on the panel of CIArb to take up speaker positions at conferences and events, and continuing its efforts to identify and promote diverse ADR practitioners.

Lastly, CIArb should track its progress annually regarding increased roster diversity and selection of these ADR practitioners, and publicise the results of such efforts.

Do you sense that awareness of diversity issues is increasing in the world now?

DU: Awareness of diversity issues has taken over the world of ADR now, as never before. This has been made possible by the advocacy efforts of various individuals and institutions such as CIArb. Several other institutions have also worked hard to increase awareness of the importance of diversity in the legal field in general and in ADR in particular. For example, the ERA Pledge now has 4,637 signatories comprising firms and individuals [as at 1 April 2021].

Several years ago, the CPR called on companies and law firms to implement a commitment to diversity and inclusion in the selection of neutrals. On 3 July 2020, it announced an updated version of its Diversity Commitment, setting out specific steps corporations, law firms and the CPR itself can take.

All of these efforts are significant, and, in the aggregate, lead to heightened awareness and improved diversity in the ADR field.

How could ADR benefit from a greater understanding of diversity?

DU: It is trite (but true) to say that cognitive diversity in groups improves decision-making and prediction. Differences in approach and points of view improve group decisions more than the capacity of the individuals who contribute to those decisions, because of the ability to bring in different perspectives, interpretations, problem-solving approaches and decision models.

Significantly, neutrals in both arbitration and mediation serve a role that is often a substitute for the judicial process. Therefore, it becomes an issue of fairness, public justice and public acceptance that the decision-makers or facilitators of private dispute resolution processes are representative of the individuals, institutions and communities that come before them.

In the absence of diversity, users of ADR processes lose out because they are not made aware of potentially valuable alternatives for particular cases. Diverse neutrals can bring new perspectives to the table, allowing for more informed decisions.

A test of mettle

In the third part of our series on CIArb's recent Supreme Court interventions, Mercy McBrayer MCIArb, CIArb Research and Academic Affairs Manager, reports on the US case of GE France v Outokumpu

The case of GE v Outokumpu featured a rare review by the Supreme Court of the United States (SCOTUS) of the interpretation of the New York Convention (NYC) as applied to an arbitration issue in a dispute that was truly international in nature. The dispute involved French and Finnish companies and centred on an arbitration agreement that named Germany as the seat. This is in contrast to the vast majority of the arbitration issues SCOTUS examines, which tend to deal with interpretations of the Federal Arbitration Act (FAA) as applied to disputes in domestic arbitration.

Because of the unique and important issues surrounding interpretation of the NYC by such a significant jurisdiction, the CIArb North America Branch submitted a briefing to SCOTUS as *amicus curiae* and was represented in doing so by Glenn Hendrix of Arnall Golden Gregory, LLP. At issue before the court was whether the NYC permits a non-signatory to an arbitration agreement to compel arbitration based on the domestic law doctrine of equitable estoppel.

This rare case saw the fundamental principle of consent in international commercial arbitration brought before the highest court in the US

BACKGROUND

The underlying dispute centred on a steel rolling mill under construction in the state of Alabama. GE France was subcontracted by the builder, FL Industries, to install the motors operating the plant. FL industries had been engaged by ThyssenKrupp, which then sold its interest in the project to Finnish cutlery manufacturer Outokumpu. Separate arbitration agreements existed between FL and GE and between

The CIArb North America Branch submitted a briefing to SCOTUS as *amicus curiae*

SHUTTERSTOCK

The underlying dispute centred on a steel rolling mill under construction in Alabama

FL and ThyssenKrupp, then Outokumpu as their successor. A dispute arose when the motors installed by GE failed and Outokumpu filed suit against GE in the local state court.

GE sought to have the dispute moved to arbitration, which Outokumpu objected to on the grounds that GE was not a signatory to the arbitration agreement with FL. GE argued that consent to arbitrate was embodied in the agreements and that, further, the domestic doctrine of estoppel allowed GE to arbitrate against Outokumpu. The state court agreed to move the dispute to arbitration, but on appeal the 11th Federal Circuit Court of Appeal reversed this decision, siding with Outokumpu, which had argued that the NYC did not contain any allowance for the application of a domestic law doctrine like estoppel to find consent to arbitrate and that parties must have either signed or evidenced consent in some form of communication. Further, it said, arbitration agreements called for disputes to be seated in Germany, which does not recognise the common law estoppel doctrine. GE appealed this finding to SCOTUS.

OUT OF STEP

In its *amicus* brief, CIArb pointed out that in US-seated arbitrations that have an international element, the courts have been clear that under the FAA a non-signatory to an arbitration agreement can consent to arbitrate by their conduct, including conduct that triggers estoppel under US law. The lower court's narrow reading of Art II(2) of the NYC, that a party must have either signed the agreement or agreed to be bound by an exchange of correspondence, is not only inconsistent with US domestic arbitration law, but would also hinder the proper reach of arbitration in NYC international arbitration cases, and will be out of step with the international consensus of the proper interpretation of the NYC. Further, international business deals such as the one at issue in this case often involve chains of contracts where performance by a third party is necessary for the main contract to be executed. In such a setting, interpreting consent to arbitration in the restrictive way that the 11th Circuit did would hinder parties' abilities to settle disputes that arise in cases where their international deal involved the US.

The court held that the NYC does not conflict with the domestic doctrine of equitable estoppel

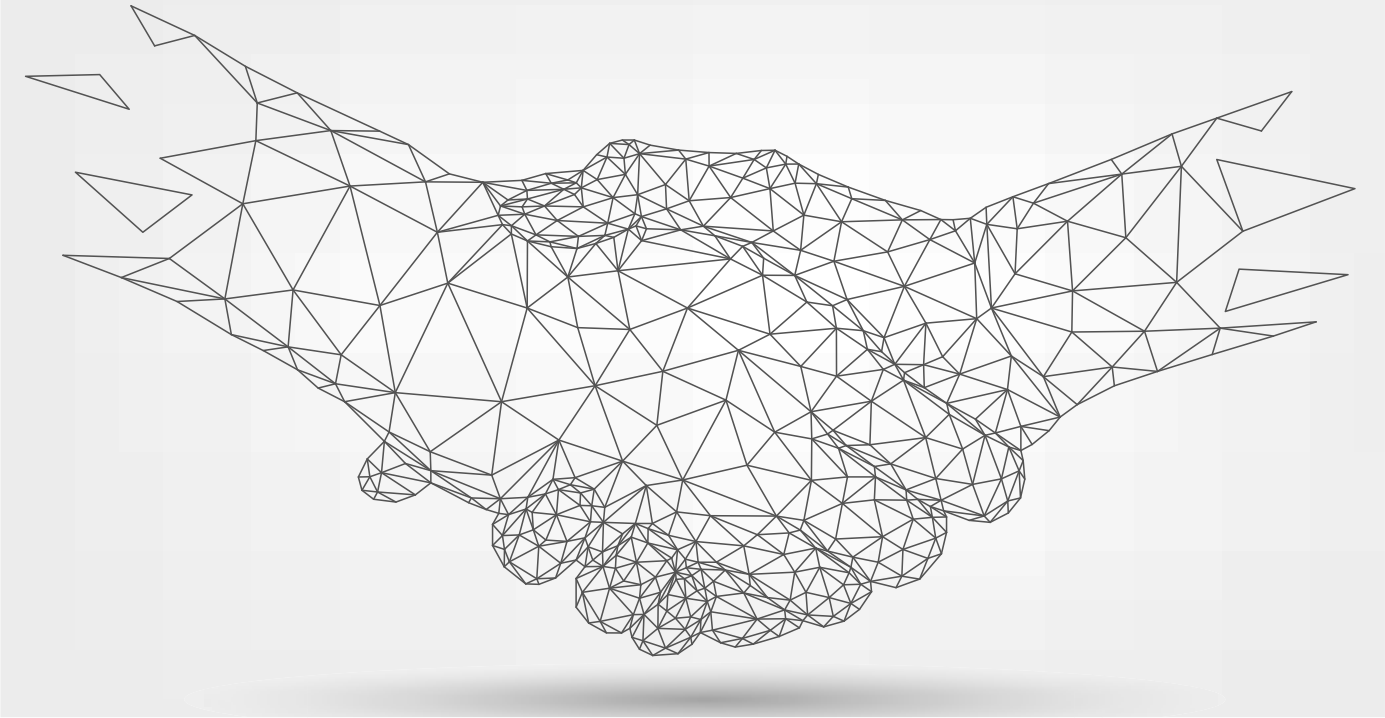
NO CONFLICT

In a unanimous verdict, SCOTUS found for GE and remanded the case to the lower court. The court held that the NYC does not conflict with the domestic doctrine of equitable estoppel, which permits enforcement of arbitration agreements against non-signatories, nor does it prohibit the application of domestic legal doctrines, such as estoppel. Rather, the NYC provides the minimum that contracting states must provide in recognising and enforcing international arbitral awards. The analysis applied to US-seated international arbitrations should be applied when analysing consent in all international arbitration agreements, including those that are not seated in the US. Thus, Outokumpu was estopped from suing in the US courts and must present its claims regarding the failed electrical motors installed by GE France in arbitration.

By intervening in this rare case on the fundamental principle of consent in international commercial arbitration before the highest court in the US, CIArb's North America Branch successfully supported a consistent and flexible application of the principles of the NYC in one of the most significant jurisdictions in global commerce.

GE Energy Power Conversion France SAS, Corp v Outokumpu Stainless LLC, USA, et al, 590 U. S. ___ (2020), Op. No. 18-1048.

Outokumpu was estopped from suing in the US courts



Working together

Dr Paresh Kathrani explains CIArb's approach to collaborations in education and training

We are proud of the training that we deliver in ADR. We offer several courses leading to membership of CIArb in domestic and international arbitration, construction adjudication and mediation, and these courses are delivered globally by our respected approved faculty. We are also working on a number of professional development courses for members. There are also a number of ways in which we collaborate when it comes to our courses.

We have a recognised course provider (RCP) framework, under which external training providers such as universities, which have programmes and modules in dispute resolution, can ask the Institute to recognise their courses. If courses are recognised under the RCP framework, applicants who successfully complete those courses can apply for CIArb membership at the relevant grade recognised by the Institute.

There are also opportunities to deliver in-house training to public bodies, businesses and others. Our post-nominals are recognised and respected the world over. In-house training provides the opportunity to collaborate with other organisations in the delivery of training so that members can access the many professional benefits that CIArb has to offer on the successful completion of their training.

INNOVATION IN TRAINING

We are also keen to work with partners on innovative new training opportunities. This is even more important as technology changes how ADR is practised. The prospect of working on new courses, such as cybersecurity and lawtech, with partners is something that can be explored. The Education and Training Department is expanding the training it offers its members, and this will include innovative new courses.

Since lockdown, the department is happy to have introduced virtual learning and online assessments

In the past few months, the department is happy to have partnered with organisations such as the Equal Representation in Arbitration Pledge to increase diversity in arbitration and Omnia Strategy to deliver pro bono training to state advocates. It has supported branches on collaborations and looked to expand its courses by talking to partners on lawtech and other ADR courses. The department is particularly keen to promote its Introduction courses as a means for individuals to enter the Institute and benefit from the networking and other opportunities it provides.

These will be accompanied by changes in pedagogy and course delivery in the coming months. Since lockdown, the department is happy to have introduced virtual learning and online assessments, and is currently looking at further innovations in learning and teaching. Other forms of teaching will be coming soon.

Dr Paresh Kathrani is Director of Education and Training at CIArb. For more information, contact CIArb at education@ciarb.org

SHUTTERSTOCK

What's on

A selection of training opportunities for CIArb members

BRANCH FOCUS: ZAMBIA

Zambia grows course offering

While the COVID-19 pandemic resulted in major disruption to the 2020 training calendar for the CIArb Zambia Branch, it also precipitated early planning for the 2021 calendar and orientation to virtual training. It also provided opportunities for outreach to candidates outside urban centres.

The Faculty reflection meetings organised by the Education and Training Sub-Committee of the branch highlighted the need to establish a systematic programme of Faculty development. A comprehensive shadowing and capacity development programme has been instituted under the guidance of the Regional Pathway Leader.

The Arbitration Pathway has widespread appeal, and all courses up to Award Writing are on offer in 2021, as in previous years. The online environment

allows candidates to interact with each other and the Faculty through dedicated social networks, fostering a stronger sense of professional community.

The Adjudication Pathway is also now offering all courses up to Decision Writing. Candidates from neighbouring countries have enrolled, expanding the reach of the Zambia Branch. Specialised offerings, relevant to the law and practice of adjudication in these jurisdictions, are under development.

Much more challenging is the Mediation Pathway. With the participation of the Zambian Faculty in the coaching of trainers of online facilitation of Module 1 by London in 2020, and a successful Introduction to Mediation Course hosted by the branch in February 2021, plans are underway for the first cohort of mediators to be trained and assessed in Module 1 Mediation with a hybrid of online training and face-to-face assessment.

This year will see at least 11 Pathway courses on offer, the highest number in one year in Zambia since the formation of the branch. The stage is set for increased course offerings and increased numbers of participants accessing, in a cost-effective manner, the world-class training that the Institute has to offer.

CIArb TRAINING MAY–JULY 2021 (courses and assessments are online unless otherwise stated)

CIArb offers an online introduction course and one-day, virtually taught introductory courses in different forms of ADR.

- **Virtual Module 1 Mediation Training & Assessment**
  1 June **£3,600**
- **Online Intro to ADR**
  Open entry, available all year to 31 December **£24**
- **Online Intro to Mediation**
  Open entry, available all year to 31 December **£75**
- **Student: Introduction to ADR Online Course & Assessment**
  Open entry, available all year to 31 December **£25**

Those who have experience in ADR can undertake a CIArb Accelerated Assessment Programme to assess if they meet the relevant benchmarks for Membership or Fellowship.

- **Accelerated Route to Membership (ARM): International Arbitration**
  13–15 July (three days) **£1,000**

The following assessments are completed via LearnADR, CIArb's e-learning platform.

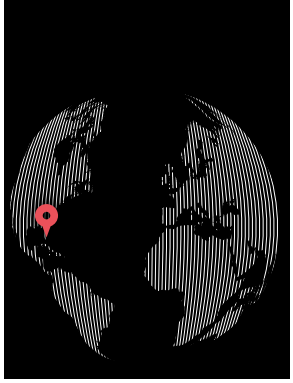
- **Module 2 Law of Obligations Assessment**
  13 May **£342**
- **Introduction to Construction Adjudication Assessment**
  14 May **£72**
- **Module 3 Award Writing Domestic Arbitration Assessment**
  11 June **£408**
- **Module 3 Award Writing International Arbitration Assessment**
  11 June **£408**
- **Module 3 Decision Writing Construction Adjudication Assessment 2021**
  11 June **£408**
- **Module 1 Law, Practice and Procedure of Construction Adjudication Assessment 2021**
  8 July **£174**
- **Module 1 Law, Practice and Procedure of Domestic Arbitration Assessment**
  15 July **£174**
- **Module 1 Law, Practice and Procedure of International Arbitration Assessment**
  15 July **£174**
- **Transitioning from the Old Pathway to the New Pathway – Practice & Procedure-only exam**
  15 July 2021 **£72.50**

Contact Natalie Greenidge-Batson at ngbatson@ciarb.org to book this assessment.

Professional Development Courses – these are open-entry courses and may be started at any time during 2021.

- **Avoiding and Resolving Contractual Disputes**
  Open entry, until 31 December **£36**
- **A Guide to Arbitration Award Writing**
  Open entry, until 31 December **£150**
- **Brand Protection in Times of Disputes**
  Open entry, until 31 December **£36**

Prices stated do not include VAT. For more details, go online to ciarb.org/training. Alternatively, contact CIArb at education@ciarb.org or call 020 7421 7430.



Culture of arbitration

Miami's location and breadth of legal expertise make it a key centre for ADR in the Americas, writes **Gary Birnberg FCIArb**

Miami, Florida, is sometimes called 'the capital of Latin America'. It is a description that contains an element of truth, and not only because so many of Miami's citizens are of Hispanic heritage.

The third largest city on the US East Coast, Miami is strategically placed as a transport and commercial hub linking North America, South America and Europe. Not surprisingly, Miami is also an important international centre for arbitration and mediation.

One recent case in which I was involved, for example, was classified as a 'domestic' dispute – because the actions in question took place in the US – even though none of the parties involved was American and one, in fact, was domiciled in Belgium.

GROWING OPPORTUNITIES

Florida's laws and judicial system also underpin Miami's role as a seat of arbitration. In 2003, the Supreme Court of Florida approved rules that mean counsel representing parties in international arbitrations in Florida do not have to be members of the state's Bar.

The Eleventh Judicial Circuit of Florida – in which Miami is located – has its own International Arbitration Court, presided over by two judges with experience in international commercial arbitration. The Arbitration Committee of the United States Council for International Business has a sub-committee for Florida.

Downtown Miami

The academic sector is also supportive. The International Arbitration Institute is part of the University of Miami's School of Law, and the University offers an LL.M programme in international arbitration.

The Miami Chapter of CIArb was founded in 2018 and represents all CIArb members in the state, from established practitioners to the newest generation of ADR professionals. It's very encouraging to see that there is a great deal of diversity in terms of the demographics of this group, including age.

CIArb has been growing worldwide, and the progress we have seen in the Americas generally – including, for example, the opening of the Brazil Branch in 2019 – can only create more opportunities for our Miami-based members.

A HOLISTIC APPROACH

We are ambitious for the Miami Chapter and – as the lockdown restrictions imposed by the COVID-19 pandemic finally ease – we look forward to hosting events for our members, not only those based in the state, but also those from across North America and beyond.

Of course, one of the challenges is to find new programme and engagement opportunities when there is already such a culture of arbitration here. We aim to hold an annual event for members that will become a key fixture in the ADR calendar. I believe that the unique remit of CIArb, with its expertise in both arbitration and mediation, also means we can help promote a 'holistic' approach to dispute resolution.

This is a very interesting time to be an ADR practitioner, and Miami is a very good place to be based.

It's very encouraging to see that there is a great deal of diversity in terms of the demographics of the Miami Chapter

SHUTTERSTOCK

ABOUT THE AUTHOR

Gary Birnberg FCIArb is a mediator and arbitrator with JAMS, the world's largest private ADR provider. He is a seasoned ADR professional, specialising in the resolution of a diverse array of commercial matters both domestic and international, with particular expertise in complex commercial cases, especially in the insurance and reinsurance, aviation, life sciences and energy sectors, and the arts. Gary is based in Miami, Florida, and is the immediate past Chair (and Founding Chair) of the Florida Chapter of CIArb. He is a founding partner of Global Mediation Alliance (Singapore).