

ARBITRALWOMEN

The International Network for Women in Dispute Resolution

The Third Eye - Understanding and using cultural differences to aid in effective dispute resolution

ArbitralWomen organized an interactive round table forum on “IMPACT OF CULTURE” on June 10, in conjunction with the ICCA Congress 2012 in Singapore. It was the first substantive session held at the ICCA Congress, an add-on Sunday afternoon, before the opening session, our fourth such event since 2006.



The event was chaired by Karen Mills of KarimSyah Law Firm in Jakarta. The invited panelists discussed cross-cultural differences and how mediation and arbitration are affected by these differences. **Louise Barrington** who practices in Asia, Europe and Canada highlighted the importance of process in negotiation. Remember that every time you prepare to negotiate, one question should be uppermost in your mind: How can I know what the other side is thinking and what do they really want, so as to come to an agreement that not only makes me happy, but also satisfies my partner(s). In a situation where we are dealing with someone from our own country, culture and language, Louise says, can refer to certain signposts in our common heritage that, once observed, usually give us insight and stimulate our intuition thus smoothing the way to a successful and often pleasant negotiating experience.



Westerners often make the mistake of assuming that goals and values of other parties are similar to theirs, but it is this very mindset that neglects the importance of “face”, or standing in the community, the important role played by honesty and patience, time and communication.

Patricia Prodigalidad, a partner at Angara Abello Concepcion Regala and Cruz Law offices in Manila discussed nepotism and cronyism as an accepted way of life in some countries in the East and discussed how it effects the outcome of arbitrations. An aspect of dispute resolution in the Philippines is parties do not always express negative thoughts so it is necessary for the mediator or arbitrator to draw them out. In regards to the arbitral outcome many times the “Solomon resolution” is accepted and a clear winner and loser is looked on with suspicion.



Sitpah Selvaratnam, co-founder of Tommy Thomas in Kuala Lumpur focused on the importance of understanding our own prejudices in order to ensure a fair procedure.

Western arbitrators must allow witnesses to develop their answers. The use of the word “yes” could mean “I hear you,” rather than signal agreement. Patience is important for counsel and the arbitrator

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Our Winter Issue of the ArbitralWomen newsletter will focus on women leaders in the field.

Please submit articles by November 1, 2012 for consideration

because if you lose your temper you lose “face” which in the long run could make it impossible to settle a case or obtain an agreement.



Bronwyn Lincoln, a partner at Freehills in Melbourne, focused on communication and discussed how cultural and language differences could influence the process including how different cultures treat time and the importance in recognizing the “time” culture in which you are mediating or arbitrating. In Indonesia, for example time can be negotiating tool. Keeping people waiting may be conveying a message. In the Philippines parties generally run late, an accepted behavior in their culture.



In addition to moderating the discussion, **Karen Mills** added her experiences in Indonesia. She said that it is important to know not only where a person is from but also to which culture she belongs. This gives clues as to how the Indonesian party views her obligations and will act.

To be successful in mediating and arbitrating in Asia develop a third eye - be prepared, understand and respect differences.

Debora Slate

Finding your Way to International Commercial Arbitration: a student’s journey to the 2012 Vis Moot

International Commercial Arbitration is often described as a closed circle where students struggle to find an entry point. For aspiring students with a passion for arbitration, the Willem C. Vis International Commercial Arbitration Moot Competition (also known as the “Vis”) is a stepping stone providing practical experience, and



Ida Feze

a unique networking opportunity with students and professionals from all over the world. Indeed, this year, about 1800 students and 800 professionals gathered in Vienna during one week for this special occasion. While many law schools regularly participate in the Vis, many of us are still in institutions that do not participate,

or, do not have the necessary funding to provide this opportunity. Thus, for some students, getting their university to support student participation in the Vis becomes a matter of passion, hard work and dedication. The following information may be useful to those aspiring to get to the Vis.

have not had an arbitration class, this should not prevent you from getting involved. Speak with professors, some may already be arbitrators, or have participated in the moot. They are a valuable resource. Even if they are not available to help you organize or coach a team, they nevertheless may point you to other professors or professionals that will be of assistance to you. Faculty members will provide you with the institutional support you may need and they are always enthusiastic when they see young people aiming for their area of practice. Having faculty members support your project, will give you even more credibility to seek assistance from your law school administration. Don’t hesitate to schedule an appointment with the Dean. While it may be clear that your faculty does not have the funding, having the administration take note of the students’ interest in the Vis Moot is important and they may be willing to assist you in other ways. This will also be important to institute the Vis participation and have it credited to ensure this opportunity will be available for other students.

- **Begin with the faculty:** Your first starting point at your law school is getting in touch with professors teaching arbitration. It will be most efficient if you have taken an arbitration class and performed well. But if you
- **Finding Funding:** there may be some hidden treasures at your institution that you need to seek out. Here are a few pointers:

Are there any student organization at your law faculty or university that may provide financial support?

Are there any programs at your faculty or university that provide financial assistance or sponsorship for students' projects or promote your institution abroad?

Find a law firm that is willing to invest in your project: many law firms want the opportunity to be present in Vienna or to have more interaction with law faculties whether it is for recruitment, scholarships or having more attorneys involved in academics for publication or teaching purposes.

It may even be a law firm outside your country, especially if it has an office in your country.

Remember that firms may get tax credit for assisting university students and the recognition in Vienna may be enough to have them go beyond their borders. Be sure to meet the firm's budget deadline, usually there is a time period by which firms set their annual budget.

Private companies may also be interested in sponsoring, remember that tax credit is a valuable tool for them as well as the extra publicity and access to law students.

Ask your fellow students for support: fundraising activities are a great way to raise money and get positive encouragement from your classmates, family, and

friends. One student was able to have her travel costs significantly reduced by using a family member's air miles (she ended up paying only the taxes for her ticket to Vienna).

Look for international or non-governmental organizations that may provide financial assistance. This may even include professional associations. So it is also important to get involved in your local arbitration association even as a student you surely can make a difference and your involvement alone would attest to your interest and determination. Don't be afraid to be the only one, or even the first one to request membership. Networking is a great way to find support among established professionals.

- Create a sponsorship catalogue that may be sent to all potential sponsors. Don't forget to thank each of them and send them a financial report and some photos of your journey, especially if you cannot host a "Thank you" event.

In all of the above initiatives. **START EARLY!** Many of these efforts require months to come to fruition and cannot be achieved (at the last moment!)

It took us about two years to enable our university to reach the Vis for the second time this year, and it was worth all the hard work. We were the only institution from our Canadian province to participate and receiving an honorable Mention for our

Respondent Memorandum. It was a great accomplishment. Of course, this achievement would not have been possible without the help and assistance of many professors and professionals: Nabil Antaki, Mirèze Philippe, Benjamin Davis, Janet Walker, and Marie-Claude Rigaud to name a few. Additionally, the organization ArbitralWomen and its network was also of great support.

For students aspiring to make their first step into arbitration, may our experience help you advance your journey to one of the most enriching experiences of your early career by making your way to the Vis!
Ida Feze

Congratulations!

ArbitralWomen wishes to congratulate the four women who were recently elected to the International Council for Commercial Arbitration (ICCA). We salute ICCA for focusing on inclusiveness.

Adriana Braghetta, partner at LO Baptista Advogados in Rio de Janeiro and the president of the Brazilian Arbitration Committee, CBAr.

Meg Kinneer, secretary general of the International Centre for the Settlement of Investment Disputes in Washington, DC.

Lucy Reed, the Hong Kong based co-head of Freshfield Bruckhaus Deringer's international arbitration group

Ariel Ye, a partner at King & Wood Mallesons in Beijing.

ArbitralWomen Network Around the World

Hong Kong

Mary Thomson hosted an elegant Friday evening at the Royal Hong Kong Yacht Club for a dozen AW members and potential members. All those present took time off from a busy week of judging Vis East arguments to enjoy fine food and a glorious view of Hong Kong's spectacular night-time skyline. AW members Louise Barrington, Mary Thomson, Beatrice Castellane, Florence Gladel, and Dominique Brown-Berset welcomed newcomers Mina Wang, Helen Hoopes, Laura Feldman, Zara Bozhko, and Lily Ngo. Later, at the Gala, the women presented Louise with a gift certificate for a massage at the Peninsula Hotel spa, to help her recover from all the work and stress of the competition.

Louise Barrington



Participants gather for a group photo on 23 March in Hong Kong

Frankfurt

During the week of the Frankfurt Investment Moot, an informal lunch meeting took place on 12 March 2012 that was attended by eleven AW members from both within and outside of Germany. The participants had an opportunity to discuss current developments in the arbitration field and get to know each others' specific areas of practice. Everyone enjoyed the exchange with other female practitioners in a very pleasant and enjoyable atmosphere.

The Frankfurt Investment Arbitration Moot Court is organized by the Wilhelm Merton Centre for European and International Economic Law at the Goethe University Frankfurt am Main. The 2011/2012 competition was the 5th edition. Forty teams from universities from all over the world compete in oral hearings based on a case study that is based on a historic fact pattern. The 2011/2012 case study was based on a banking litigation that took place in ancient Greece. The Jamaican team from Norman Manley Law School in Kingston won the first prize. Each team member will receive a scholarship for a three-week placement at The Hague Academy of International Law.

Anke Meier



Clockwise from the row facing the photographer: Bonnie Bird, Tanja Pfitzner, Anke Meier, Sabine Konrad, Lisa Richman, Bettina Schmaltz, Sophia Lange, Katherine Simpson, Frauke Albrecht, Brunela Vieira de Vincenzi, Jana Scharm

London

On 27 March 2012, an ArbitralWomen dinner was held in the Red Room of the Bleeding Heart Restaurant in London, sponsored by Crowell & Moring and HoganLovells. The event was a sell-out and was well-attended by approximately 40 members of many of London's leading arbitration practices, students and others with links to arbitration practice. After a lovely dinner, attendees listened to Juliet Blanch, co-chair of Weil, Gotshal & Manges' International Arbitration Practice, address the thorny topic of "Having a successful international career: is having it all truly possible?" Juliet provided an entertaining overview of her career to date as a female arbitration practitioner, including offering up her tips for how to 'have it all' and in

particular how to achieve a sensible work/life balance. The talk was well received and sparked a number of questions (and some lively debate) from the audience.

This was the first Arbitral Women social event held in London for some time, but we hope it will not be the last. Please look out for news of future London social events!

Claire Stockford

New York

On 2 April 2012, women (and a few men) in the New York international arbitration community came out for a farewell cocktail party for Freshfields partner, Lucy Reed, on the eve of her departure for her firm's Hong Kong office. Lucy reassured her colleagues that she will remain a familiar face in New York with regular trips home. A group of over 30 attorneys came out for the event, hosted at Gravy Restaurant Bar in Manhattan. The event was organized by Jennifer Cabrera (Cabrera Cammarota PLLC), Anna Kozmenko (Curtis, Mallet-Prevost, Colt & Mosle LLP), Gisela Paris (Freshfields Bruckhaus Deringer LLP) and Lucero Ramirez (Allen & Overy LLP).

Jennifer Cabrera



L-R (Lucy Reed, Jennifer Cabrera, Anna Tevini, Francesca Giannoni-Crystal & Kiran Gore).

Stockholm

On 9 March 2012, a gathering of a dozen AW members took place at the Hotel Sign Stockholm at the end of the 15th Annual IBA International Arbitration Day Conference at a reception hosted by Toni Pincott, from StoneTurn. Practitioners from diverse countries including Lithuania, Switzerland, Mexico and the UK were able to meet and discuss the day's presentations which focused on the neutrality of arbitrators and the arbitral process. We were grateful also for the presence of Judith Gill QC who had led the last session of the day on the new IBA Guidelines on Conflicts. An interesting reflection for the gathering was that, in discussing bias in terms of the frequency of representation and connection to clients, as well as ethnicity and nationality issues and the reality is that there are relatively few women being appointed to tribunal panels. This compared dramatically to the sheer numbers of women attendees at this conference who are demonstrably active in this field of law and moving forward the boundaries and reach of their international arbitration practice. Given the collective intellectual collateral and capability represented, we can aspire to addressing and this issue achieving greater focus going forward.

Antoinette Pincott

Washington, DC

On 29 March 2012, in conjunction with the Annual Meeting of the American Society of International Law (ASIL), ArbitralWomen co-sponsored "Women in Arbitration," an informal gathering of women who are interested in arbitration. The reception took place at the Fairmont Hotel in Washington D.C. and garnered some 50 women. This is the fourth year that this event has taken place, and it is becoming an important gathering for those interested and active in international arbitration. The relaxed setting gave attendees the chance to reconnect with fellow practitioners and meet new people. The event was a great success so do keep this in mind for next year!

Chiara Giorgetti

ICANN and ODR in Prague - June 2012

The last week of June in Prague was dedicated to online dispute resolution. The 44th Internet Corporation for Assigned Names and Numbers meeting (“ICANN



Mirèze Philippe

44”) (<http://prague44.icann.org>) was held from 24 to 29 June, and the 11th International Online Dispute Resolution Forum (“ODR 11”) (<http://odr2012.org>) took place from 27 to 29 June. Stakeholders of the virtual world gathered for different purposes.

ICANN’s discussions concerned issues related to its mission, i.e. the domain names. An important number of the some 150 sessions were devoted to the new generic top level domain (“gTLD”). One session was specifically dedicated to resolving the disputes that may arise from applications to a new gTLD. ICANN agreed to entrust the administration of such disputes to three dispute resolution institutions: the ICC, ICDR and WIPO (for further information see <http://newgtlds.icann.org/en/applicants/agb>).

ICANN 44 gathered more than 1800 participants and the meeting was sponsored by some 20 companies. This meeting was one of the three that ICANN organizes yearly. Participants’ only cost was travel, everything else was free of charge, the registration, the material, the meals and the gala dinner. Seventy ICANN staff members were present in Prague to orchestrate the event. Everything was well organized. Verbal transcripts were displayed on large screens during the speeches followed by helpful questions and answers sessions.

ODR 11 was at a more personal level with some 50 participants. It was also entirely sponsored and very well organized. Yearly forums are organized in various places around the world involving stakeholders and others interested in the field. The ODR Forum gathered experts who have met since 2000 in small groups to learn about works led by different organizations involved in online dispute resolution, to debate issues of concerns, share experience, and discuss potential solutions. Some have developed tools or platforms,

other published articles or books. However, initiatives have so far remained at the same level, with dispute resolution institutions creating platforms to serve the users of their services, and online dispute resolution providers offering their services for resolving business disputes but not yet consumer disputes. Thus far, no cooperation between organizations has been undertaken until recently. Modria (<http://www.modria.com>) is now currently developing a platform which would offer to different profiles a space for resolving disputes. In addition, Modria is cooperating with the International Institute for Conflict Prevention and Resolution (“CPR”) to develop a dedicated dispute resolution platform using CPR procedures.

The participants noted that standards, best practices and educating potential users about online dispute resolution is needed. Also noted, was that the voice of end-users is not heard in the design phase and that they should be involved from the outset of the process. It was also remarked that dispute resolution institutions are not realizing the immense potential market of consumer disputes.

The work undertaken at UNCITRAL since 2010, which involves some of the participants at this Forum, was also referenced. UNCITRAL’s working group on online dispute resolution is preparing a framework for a global system of online dispute resolution.

Finally, it was gratifying to see that many women were present participating on panels. A significant number of women also participated in the ICANN meeting and half of the ODR 11 participants were women.

Mirèze Philippe

Canadian Arbitrator Yves Fortier joins Four Women on the World Bank Sanctions Board

The World Bank recently announced the appointment of Yves Fortier, international arbitrator and former Canadian ambassador to the United Nations, as Chair of its Sanctions Board. Mr. Fortier is now an independent arbitrator and resident member of Arbitration Place in Toronto.



Yves Fortier

The Sanctions Board is a quasi-judicial branch within the Bank, empowered to fight corruption in World Bank financed projects. Since its inception in 1999, it has sanctioned over 530 firms and individuals for fraud and corruption. Sanctions can involve a firm being blacklisted -- ineligible to work on World Bank or multilateral development banks' projects. When the Bank learns about alleged misconduct on the part of a

consultant or a company it conducts a preliminary investigation. If there is sufficient evidence, an Evaluation Officer issues a Notice of Sanctions Proceedings against the company or consultant, and the case goes to the Board Chaired by Mr. Fortier. There is often an opportunity for settlement negotiations between the Evaluation Officer and the impugned consultant or company. "There is a perception that the process favours the high and mighty who can afford expensive lawyers to represent them at settlement conferences," said Mr Fortier. "However, in the cases I have chaired, I have been impressed with the quality and seniority of the lawyers who represented the respondents."

More recently, the World Bank has released seven decisions issued by its Board in cases of alleged fraud and corruption, in order to improve transparency and accountability but also to develop a set of much needed precedents. The publication of these decisions should create some certainty for companies and contractors and clarify the scope of what are "corrupted and fraudulent practices".

Mr Fortier chairs the seven-member board, of whom no less than four are women: Marielle Cohen-Branche, a judge of the French Court of Cassation, Patrizia Diaz Dennis, former Senior Vice President and Assistant General Counsel for AT&T Inc., Kate O'Reagan, President of the International Monetary Fund Administrative Tribunal and Chairperson of the UN Internal Justice Council and Hoonae Kim, currently Sector Manager for the World Bank's Agriculture and Environment Program in the Middle East and North Africa Region.

Ms. Cohen-Branche was not surprised at the feminine majority on the Board. As a judge in the prestigious Cour de Cassation's commercial division, she is accustomed to women having critical mass, and in fact said that more than half the judges are women. "Personally," said Ms. Cohen-Branche, "I'm far more intrigued by the fact that all seven members of the Board came from different continents."

Commenting on the Board's diversity, Ms. Diaz Dennis noted that "although Board members start off with a different analytical framework due to their legal background, they end up on the same substantive result, and I find that really fascinating." Ms. Diaz Dennis was pleasantly surprised to see a majority of women on the Board. "It's still rare to see women being part of decision making bodies. The World Bank has made a conscientious effort to appoint women to higher positions within the Bank and it's encouraging. This is a far cry from when I graduated from law school - during the Neolithic period for women. Nevertheless, the challenges have not significantly changed since that time. The biggest challenge for women continues to be how to reconcile your personal life with your career."

Be-Nazeer Damji

Report on Lewiatan Arbitration Moot Court in Poland

Nearly 290 trainees of the Polish advocates' and legal advisors' bars took part in a recently concluded Lewiatan Arbitration Moot Court in Poland. Jeffrey Elkinson, president of the CI Arb, spurred young lawyers on before the final and addressed the Polish arbitration community, gathered in



Beata Gessel-Kalinowska

great numbers for this occasion at the University of Warsaw Library. The final

round was followed by the Arbitration Picnic, held in the Library gardens.

The Lewiatan Arbitration Moot Court was organized by the Lewiatan Court of Arbitration and the Young Arbitration Practitioners in Poland (YAPP) with an aim at promoting alternative dispute resolution methods among young lawyers starting their professional career after graduation. The number of participants highly exceeded expectations and the Lewiatan Arbitration Moot Court has become the biggest event of its kind in Poland – says Dr. Beata Gessel-Kalinowska vel Kalisz, president of the Lewiatan Court of Arbitration and originator of the moot. Together with the event organizers Anna Pukszto and Agnieszka Wojciechowska. It was observed that the level of competition and skill displayed by teams was extraordinary. Devised

by Agnieszka Wojciechowska, the moot problem arose from a contract concerning construction of a football stadium for Euro 2012 in Poland. As well as other substantive issues, competitors had to face the issue of challenging an arbitrator. A similar problem, not imaginary this time, arose at the final round of the moot when Dr Gessel-Kalinowska vel Kalisz had to step down from the judging panel in light of a conflict of interest when one of her trainees qualified for the final.

The competition was held under the CI Arb's honorary patronage and supported by top Polish and international law firms: CMS, GESSEL, Hogan Lovells, KKG, SALANS, SK&S, Squire Sanders, Wardynski & Partners. The high level was guaranteed by the presence of honorable guests and well known arbitrators such as prof. Jerzy Rajski, prof. Stanisław Sołtysiński, Piotr Nowaczyk, Bartosz Krużewski, Jolanta Nowakowska-Zimoch and many others, hosted by the president of the Lewiatan Court of Arbitration. Winners were awarded attractive prizes including the chance to participate in the Vienna Arbitration Days 2013.

The second edition of this competition has been scheduled for 2013.

Photos from the event can be found at the AW website.

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Women who wish to join the organization may submit an application with a C.V. directly to the website.

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