

CPR Arbitration Committee Meeting

Date: March 8, 2022
Time: 12:30 – 1:30 (ET)
Location: Online (Zoom)

Attendees:

Lili Schroppe (CPR)	Michael Lampert
Lio Bocorny	Donald Rose
Samuel Zimmerman	Helena Tavares Erickson (CPR Liaison)
Steven Bierman	Rose Marie Wong
Viren Mascarenhas (Vice-Chair)	Orlando Cabrera
Elizabeth Edmondson	Richard Ziegler
Harry Trueheart	Ellen Parker (CPR)
Ulyana Bardyn	Jennifer Glasser (Chair)
Erin Gleason Alvarez	Surya Gopalan (Secretary)

Minutes

Ms. Glasser opened the meeting and welcomed all participants and members of the Arbitration Committee of the International Institute for Conflict Prevention & Resolution (CPR).

1. Presentation by Meriam Al-Rashid and Ulyana Bardyn on the role of artificial intelligence in international arbitration

Ms. Bardyn delineated different types of artificial intelligence (“AI”): (i) weak AI, which mimics human thinking or reasoning, but still needs to be operated by humans; and (ii) strong AI, which works independently of humans and can evolve. She explained that strong AI is generally still considered something for the future but that we already see weak AI much used in international arbitration. She noted that the McKinsey Global Institute estimated that 23% of attorneys’ work could be automated to some extent. She explained that these tasks – which would still require human control – include legal research, drafting simple things (e.g. chronologies), and document review. Ms. Bardyn also described, as an illustration, a program capable of analyzing precedents and predicting outcomes of decisions of the U.S. Supreme Court with a 70% accuracy.

Ms. Bardyn voiced doubts that AI would come to displace much of what international arbitration lawyers do. She said that this was because it would be hard to build programs that determine the complex interplay between legal systems, which we see much of in arbitration. This program would be more complicated to design than those that engage with relatively more closed systems of jurisprudence, for example, the U.S. Supreme Court and the European Court of Human

Rights. She noted also that international arbitration is typically confidential, which reduces the scope of material available through programs can learn. And she noted that complex legal services still rest on emotional intelligence, a weighing of countervailing factors, and judgment. None of these factors is easily replicated by AI.

Ms. Al-Rashid discussed the role of AI in discovery and expert and arbitrator selection. She noted that AI-based discovery is seen less in arbitration partly as a result of the fact that the scope of discovery is generally more limited. She noted that there are several tools that have emerged over the last three years available to help parties select arbitrators / experts including Lexis, Cleo, Smokeball, Billybox, Arbitrator Intelligence, and NDA. She noted that users of arbitration have not moved as quickly as the tools available but expected to see greater engagement in the future. Ms. Al-Rashid queried whether, if AI was to become an increasingly significant part of the arbitrator selection process, this would affect the scope of potential conflict disclosures made by counsel and arbitrators.

2. CPR's Ellen Parker report on the 2022 annual meeting

Ms. Parker gave a report on CPR's Annual Meeting, which took place virtually, on March 2-4. She noted that the videos of the panels are currently being edited and will soon be made available online. The theme of the meeting was technology and dispute management. She noted that panels considered the duality that technology could be used to help resolve and prevent disputes, but could also create disputes. Panels addressed issues including: (i) how legal departments / companies use technology to identify regulatory / legal risk; and (ii) the risk of implicit bias in AI. The General Counsel of Microsoft, Hossein Nowbar, gave the keynote address.

Ms. Parker solicited the Committee's views on whether to maintain virtual meetings in years ahead. The general reaction was that, while the virtual format was very well done, there remain many virtues to meeting in person if possible.

3. Announcements

Mr. Zimmerman noted that a working group comprised of members from the Healthcare and Life Sciences and Arbitration Committees are together drafting a guide to best practices in life sciences arbitrations. The goal is to produce a desk reference for in-house counsel on various issues they may encounter in the life cycle of an arbitration. The group has already drafted an outline, comprising 11 topics, and is looking for three more contributors. Interested members are encouraged to contact Mr. Zimmerman or Ms. Erickson.

Ms. Glasser noted that the Arbitration Committee is convening a task force to evaluate existing procedures falling under CPR's discretion under the current CPR Arbitration Rules (e.g., arbitrator challenges, joinder, and consolidation). Specifically, it will: (i) determine whether any updates are needed to those procedures to bring them into line with prevailing best practices; and (ii) consider the merits of referring one or more of these procedures to a third-party body independent of CPR. The objective of the Task Force is ensure that CPR's Arbitration Rules provide users with transparency and clarity on important procedural issues arising in an arbitration.



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Ms. Glasser concluded the meeting.

