

ICCA Sydney: The Moving Face of Technology

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Part 1: Technology as Facilitation

"The future is already here; it's just not evenly distributed."

Paul Cohen, assisted by Gabrielle Nater-Bass, Hugh Carlson and Rashda Rana SC, opened his session with this quote from Mr William Gibson, and was able to demonstrate it through his discussion of technology as facilitation in arbitration.

Upon entering the conference room, delegates most likely did not anticipate watching clips from Star Trek, watching a witness interview with Darth Vader, or discussing Snapchat filters, but as they were led through various technologies that could be used to assist the development of arbitration they saw all this and more.

The session was structured around three key technologies. The first, augmented reality (AR), was demonstrated to the audience through an app, which delegates were instructed to download at the start of the session. The panel considered the fictional case, *Galactic Empire v Death Star Manufacturers, Inc*, in which the Empire seeks to sue DSM for negligent manufacture of its Death Star. AR was used to visually demonstrate to the audience the set of physical circumstances required to lead to the destruction of the Death Star, and to help the Tribunal visualise the structure they were being asked to consider.

While this was highly entertaining, it was an important demonstration of the ways

that augmented reality can be used within arbitration, for example in the context of a construction dispute where the parties may wish to show the Tribunal the technical side of what is being debated. Ms Gabrielle Nater-Bass cautioned that though the use of AR is appealing, parties must be cautious to ensure that its use does not jeopardise due process and the rights of parties to be heard, to receive equal treatment, and the right to present their own case.

The second technology considered by the panel was that of instant translation. Given the cross-border nature of international arbitration, the value of this technology is immediately apparent. The panel used Microsoft Translate to demonstrate how an app can process this sort of linguistic information almost instantaneously. However, given the complexity of legal language and issues in dispute in arbitral proceedings, this technology is not yet mature enough to be implemented. Issues such as confidentiality would also need to be considered as the technology develops.

Finally, real time analytics and artificial intelligence were considered as a means by which data could be processed and analysed. Self professed Star Trek expert, Mr Cohen explained they had downloaded the full suite of Star Trek episodes, and demonstrated as certain videos were digitally and instantly extracted as evidence of various propositions (for example that Vulcans are incapable of telling a lie).

Part 2: Technology as Disruption

Part 2 of the panel took a different approach as the new panellists turned to consider technology as disruption. *Brandon Malone* as moderator was joined by *Carsten van de Sande*, *Sophie Nappert* and *Matthew Kuperholz*, for a sub-panel on artificial intelligence (AI).

Sophie Nappert drew attention to the advanced development of AI, and the ways that technological advances have already started to reshape the legal profession. Ms Nappert also asked the delegates to consider where these advances were taking us. For example, if computers are able to deliver perfect legal reasoning, what need would we have for appeal mechanisms or judicial review? However, Ms Nappert highlighted part of what it is to be human is equity, empathy, conceptual thinking, emotional intelligence, fairness and trust; and these are essential ingredients in (human) dispute resolution. It might mean that parties prefer to reign in computers, and allow fairness, common sense, honesty and empathy to

come to the fore.

Carsten van de Sande took a different approach, and suggested that AI would replace human arbitrators as fact finders and adjudicators. He suggested that where AI can overcome narrow, purpose specific application, and can replicate a human's ability to reason, solve problems and innovate, this would lead AI to develop thoughts and ideas. Experts now believe that by 2045 there will be a functioning AI that will be able to reason like a human being. Mr van de Sande rejected the notion that parties want arbitrators to employ empathy and emotional intelligence, rather parties want arbitrators to adjudicate dispassionately. One man's empathy is another man's bias.

Mr van de Sande also considered the criticism that AI cannot explain how it arrived at the decision it did. Mr van de Sande noted that this is not so different from a human arbitrator - the process leading to a decision is never fully transparent, parties simply tend to have an inherent confidence in the human arbitrator because we understand better how their mind works.

The second sub-panel dealt with cyber security. *Edna Sussman, Alana Maurushat* and *Hagit Muriel Elul* considered challenges in the digital age, particularly how people are the weakest link in tech defence, and introduced the *Draft Cybersecurity Protocol for International Arbitration*. Ms Maurushat also strongly recommended that organisations adopt cyber-insurance and helpfully advised that having a cybersecurity protocol helps to bring insurance premiums down.

Based on today's panels it is clear the future is already here, and it will be fascinating to see where these technologies take the arbitration world.

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