Kluwer Arbitration Blog

A Conversation with Claudia Salomon: Rising Arbitrators and the Developing World of International Arbitration

Yuri Leite · Saturday, March 13th, 2021 · Rising Arbitrators Initiative (RAI)

On 21 January 2021, the Rising Arbitrators Initiative (RAI) had the opportunity to speak with **Claudia Salomon**, the incoming first woman President of the ICC International Court of Arbitration (ICC Court), with closing remarks by **Yves Derains**, a former ICC Secretary General.

RAI founders **Rocío Digón** (White & Case), **Ana Gerdau de Borja Mercereau** (Derains & Gharavi), and **Alexander Leventhal** (Quinn Emanuel) led the interview, which was opened by **Flávia Mange** (Mange Gabbay) from RAI's Executive Committee. The interview was divided in three parts: (i) career advice for rising arbitrators; (ii) plans for her presidency with the ICC Court; and (iii) thoughts about the developing world of international arbitration.

Introduction

Mr Leventhal asked Ms Salomon, about how she became acquainted with the practice of international arbitration. Recalling her period at Harvard Law School, she noted that she was actually very interested in election law and voting rights. During her interviews for litigation positions, the notion of international arbitration was introduced, and, later, her practice at Squire Sanders involved some international arbitration work mixed with the litigation practice. During that time, after the events of 9/11, she took an opportunity to go to Prague to represent the firm's clients in an arbitration against financial institutions, and there she stayed for three years, thence consolidating her practice and passion for international arbitration.

Tips for Young Arbitrators

Moving on to her first experience as arbitrator, Ms Salomon highlighted the fact that conflicts of interest were the main issue preventing her from taking appointments, being an associate in a big law firm. The first appointment came from an institution. Ms Salomon pointed out how important the role of institutions is in appointing young and first-time arbitrators, fact which is confirmed by institutional statistics.

https://arbitrationblog.kluwerarbitration.com/wp-content/uploads/sites/48/2021/03/Transition-to-Advoc

ate-to-Arbitrator-–-The-issue-with-conflicts-1.mp4

An important aspect of having a breakthrough moment in terms of a first appointment is building a good rapport/profile with arbitration institutions, which can be done in various ways. Giving the example of one of her younger associates at Latham & Watkins, she told listeners how an internal seminar elaborated by the said associate went on to become an article picked up and published by Global Arbitration Review, which then led the associate to become involved with an ICC YAF panel discussion. This in turn led him to a position of leadership within the ICC YAF and, moments later, he was appointed a sole arbitrator by the ICC Court.

Acting alone as a sole or emergency arbitrator, can come with certain challenges for the first-time arbitrator. She praised initiatives like RAI's as "phenomenal" solutions to assist younger arbitrators to tackle these challenges, by thinking about and discussing these issues before they appear. Her advice for any first-time arbitrator facing these challenges is to confront the problems right away. She elaborated that, as counsel, we are used to discussing in a team, relying on others by working together, but as an arbitrator, one has to do it by oneself. Also, she indicated in passing that the irony of first-time arbitrators, appointed by institutions, is often to act in low value disputes as sole/emergency arbitrators, which often involve complex points of procedure, but involving inexperienced counsel, with no guidance from more experienced members to rely on. Ms Salomon added that we should not be paralysed by the normal fear that may arise in the context of a challenge, and get the job done.

https://arbitrationblog.kluwerarbitration.com/wp-content/uploads/sites/48/2021/03/What-problems-new-young-arbitrators-are-most-likely-to-see-in-their-first-appointments-1.mp4

These challenges will also be faced by younger arbitrators who will need to balance their counsel work with their arbitrator work, usually on a strained timeframe at both ends. Younger arbitrators need, she advised, to focus on the case management conference and think about the process, and the prospect of being able to draft the award in a short period of time. Nonetheless, this comes with a sure recognition from clients, who value the experience that lawyers have once they have sat at the other side of the table.

When asked what she thinks about professional marketing goals, that is, whether it would be advisable (or not) to market oneself in a particular area of the law when putting oneself in the market as an arbitrator, Ms Salomon noted this is actually something that all legal practitioners have to think about during their entire careers. Ms Salomon suggested that practitioners be open to change, and be able to strike a fine balance between focusing and being open to a wide variety of opportunities. She added that while it was not a good idea to specialise too young, one should find strength in one's particular backgrounds, using them to highlight one's practice. "'*What do you want to get hired to do?' You need to highlight this particular experience*," she declared.

Likewise, when dealing with balancing workload between counsel jobs and arbitrator jobs, Ms Salomon mentioned Ms Lucy Reed's speech on David Caron's "Rule of 'X'" in the 25th Goff Arbitration Lecture in Hong Kong, "*which, in simple form, is that each arbitrator should set a number – X – as the upper limit of cases that he/she is capable of managing responsibly at the same time, while also balancing his/her own life outside arbitration.*"

https://arbitrationblog.kluwerarbitration.com/wp-content/uploads/sites/48/2021/03/Advice-on-how-to-tailor-ones-profile-and-whether-to-specialise-in-a-field-or-be-more-generalist-_1-1-1.mp4

Projects for the ICC Court of International Arbitration

One of RAI's Executive Committee members, **Dr Crina Baltag**, asked what can be done to foster the concerns around diversity of arbitrators with users of arbitration. According to Ms Salomon, this is the issue that needs to be confronted in 2021. The ICC Arbitration Rules are based on user choice, she said; thus, users are demanding that arbitration reflect the actual community of users.

Drawing Ms Salomon's attention to the recently published ICC Rules 2021, Ms Digón asked her whether there is anything in the Rules that would need modification to further expand the role of diversity and the arbitrator selection process. Ms Salomon promised as the future ICC Court President not to say it is not her problem, and that, should insufficiencies be pointed out, it shall be her task to find a solution for them. She is eager to explore said solutions in the broader landscape of diversity and wants to put the ICC in a leadership position in this respect.

Answering a question from Jose Sanchez about the perceived image of arbitration as accessible only to the elites, Ms Salomon identified how this question is intrinsically related to the issue of legitimacy of the arbitration process, one she wishes to espouse during her presidency. Legitimacy should be achieved through the exposure of new names and more diversity, which will allow for arbitration to become the "antithesis of a club," she declared.

Moreover, Ms Salomon identified her main objective during her tenure to be twofold. According to Ms Salomon, among her objectives within the ICC Court is to ensure that people see the ICC as the most trustworthy institution, an institution that connects with them and assures their values. Ms Salomon also said that paramount to her objectives is the users' experience with ICC arbitration and to ensure that such experience exceeds expectations every day. She noted that the arbitration process needs to be predictable, and that it is essential for the ICC to communicate issues such as timing and costs to the parties.

Intrigued about the efforts that arbitration practitioners are now faced in terms of cybersecurity, RAI member Sebastian Kneesel asked Ms Salomon which steps institutions and arbitrators should be taking to tackle these issues. Among the many points raised, Ms Salomon noted the possibility of institutions hosting platforms where documents are shared, but also whether security standards should be imposed on parties when there is no third-party handling documentation, including, for example, the use of free email hosting providers when sharing sensitive information.

https://arbitrationblog.kluwerarbitration.com/wp-content/uploads/sites/48/2021/03/Highlighted-Claudias-vision-for-the-ICC-and-increase-the-exposition-of-young-arbitrators-1-1.mp4

Evolving Arbitration World

Moving to the third part of the conversation, led by RAI's Dr Gerdau de Borja Mercereau, Ms Salomon had the stage to answer some questions regarding the evolution of the arbitration practice. Echoing Mr Derains' own observations, she was asked about her opinions on the growing professionalism of arbitrators and what developments could be seen in recent times over this trend. Ms Salomon addressed the flexibility of the role, one which the New York Convention of 1958 makes no express delimitations to, and how important it is to find distinct people with a variety of backgrounds to act as arbitrators. In terms of the professionalism of the practice developed by arbitrators, an increase in such professionalism can only result in the increase in quality of arbitration, generally. Referring to the situation of arbitrators who may not have large experience as counsel, she points that it is a mixed experience, noting how many different backgrounds (such as young judges, in-house lawyers, and those in academia) can bring positives, and sometimes negatives, to the issue of professionalism.

In another question regarding the usage of arbitrators lists, Ms Salomon brought interesting statistics from the AAA experience, where in about 50% of their cases, the parties would opt-out of their list system, therefore emulating the ICC system for selection of arbitrators. Regarding the ICC experience, she pointed to the new ICC Note to the Parties and its express language on the assistance that the ICC Secretariat can give to help with the constitution of arbitral tribunals, whilst still allowing the parties to engage in the selection process.

While making reference to the book "Dealing in Virtue: International Commercial Arbitration and the Construction of a Transnational Legal Order" by Bryant G. Garth and Yves Dezalay, Dr Gerdau expressed how much arbitration and its sociology has changed. Also, by making reference to Paulsson's "The Idea of Arbitration", she asked Ms Salomon about her opinions on how both commercial and investment arbitration are evolving. Ms Salomon stated how commercial arbitration is a rather enduring institution, whilst investor-State disputes have seen a rising questioning over its legitimacy, one she looks forward to discussing during her tenure. She mentioned having current initiatives to foster diversity in arbitration in high regard, applauding such initiatives, as she identifies that the world is "craving connections", and that the development of new ideas within the market will not come from the top, but rather from a wide variety of voices, voices which she will be open to hear what they have to say.

On a question about institutional stance (and overall arbitration practice) on double-hatting, and the prominence of practitioners acting as both counsel and arbitrators, Ms Salomon expects for more independent arbitrators to appear, as law firms dealing with the international arbitration market have over the time gotten larger, further increasing the already problematic issue of conflicts.

Closing Remarks by Yves Derains

In his concluding remarks, Mr Derains started stating how impressed he was that Ms Salomon had really learned her arbitrator work the hard way, that is, by starting as an emergency arbitrator. As put by Mr Derains, to be a sole arbitrator is always a difficult task. He indicated his personal preference for three-member tribunal positions instead of acting alone, identifying that having other people to talk to can create better discussions, contradictions can be spotted, and that these features are very difficult to come by when acting alone. An impressive way to start as an arbitrator, he said, as he found it surprising that institutions were/are appointing younger arbitrators as sole arbitrators, often in his experience in smaller cases, sometimes with inexperienced counsel,

with hard questions being asked for an arbitrator to decide with no support of more experienced practitioners.

On the bright side, he commended young initiatives such as the RAI for they bring better exposure to young arbitrators, to whom it is essential to show the qualities that are expected from arbitrators in their very first appointment to have better chances at securing future appointments. A first experience sitting as an arbitrator can be frightening, but one must be able to decide. Mr Derains indicated the ability to decide is not really a skill that one learns during law school or in any training courses, but it is rather a skill that is developed through practice and self-assurance. One must be able to take the risk to be wrong, and not only get the trust of the parties, but also the trust of one's professional colleagues: developing a good reputation is important in the arbitration market. Another important feature for young arbitrators to show is cultural neutrality; and by that, he meant that an arbitrator must be open to any culture and must be sure he knows very little, and therefore learn from the parties, listen to them, and pay attention to the case.

Mr Derains concluded by saying he believes the future of arbitration is not in danger, because international arbitration is, really, a need of international trade. Although we have seen in recent years the reappearance of nationalism and receding international trade throughout many places, Mr Derains is of the optimistic opinion that such stances shall not last very long.

Finally, Mr Derains pointed out that the main obstacle for rising arbitrators is that there are possibly too many of them, sharing a word of advice: one is not to choose to develop one's career as an independent arbitrator because of the perception of it being glamourous, but out of passion and conviction of having the needed skills.

Final words were shared by Ms Mange, wishing the best for Ms Salomon and her incoming challenges as the next president of the ICC Court.

This entry was posted on Saturday, March 13th, 2021 at 7:16 am and is filed under Arbitrator Selection, Arbitrators, Diversity, ICC Arbitration
You can follow any responses to this entry through the Comments (RSS) feed. You can leave a response, or trackback from your own site.