Kluwer Arbitration Blog

Interviews of Our Editors: Irene Mira, Keilin Anderson, Maria Fanou, and Nicholas Diamond on Arbitration Tech

Benson Lim (Simmons & Simmons) · Friday, April 23rd, 2021

Hello, World!

Big Tech is a term more commonly used to describe the largest and most dominant technology companies. No doubt Big Tech's technology has been making extensive and significant impact on our day-to-day lives. The impact of arbitration tech on the arbitration world has also been noticeable. As our readers would know our Blog recently launched a new series called Arbitration Tech Toolbox. It is apt today that our fellow editors share their candid perspectives on arbitration tech. The fifth of our Interviews of Our Editors series continues with our interview of four of our fellow editors: Irene Mira (Assistant Editor for Southeast Asia), Keilin Anderson (Assistant Editor for Australia, New Zealand and the Pacific Islands), Maria Fanou (Assistant Editor), and Nicholas J. Diamond (Assistant Editor).
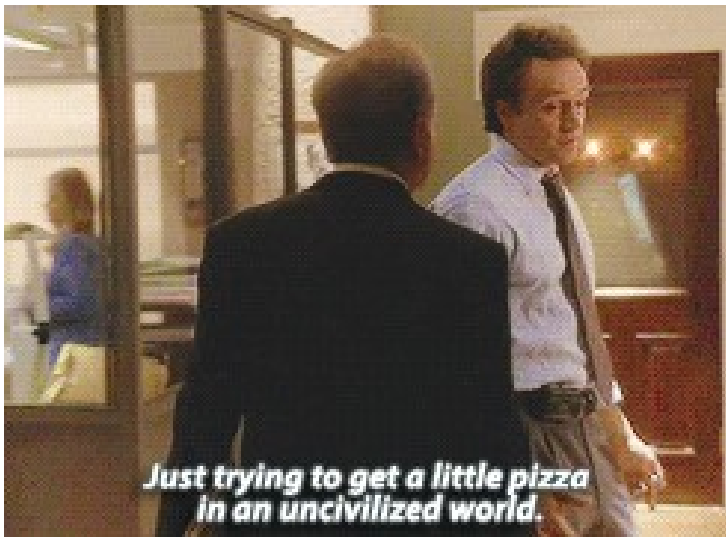
1. *Thank you all for joining me! Please describe yourself with meme(s), in no more than 280 characters, or in a shorter than 60-second GIF.*

IM:
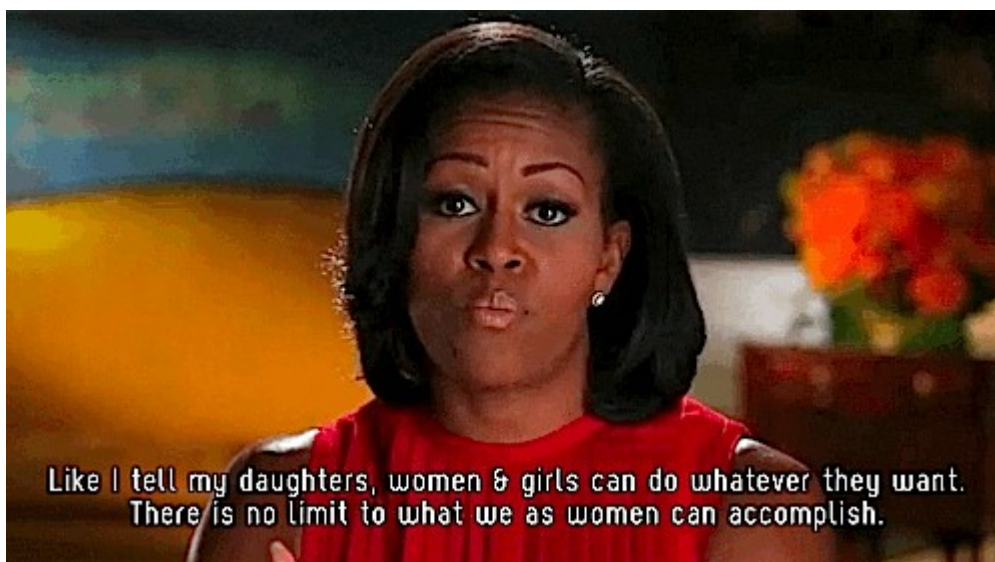
KA:

MF:

ND:

2. *What do you think has been the biggest impact of arbitration tech on your arbitration practice and career?*

IM: Even though all case management related matters and some of the institutional projects can now be done without in-person interactions at all, arbitration tech has yet to dominate my work as an International Case Counsel at the Asian International Arbitration Center ("AIAC"). It is worth mentioning, however, that the AIAC has launched AIAC Tech Expert Committee ("AIAC TEC"). The AIAC TEC envisions coming up with, amongst others, standard form contracts ("SFCs") in the tech industry. I do believe that it is just a matter of time before we witness an eruption of tech disputes being resolved by arbitration, be it institutionally administered or ad-hoc.

In terms of my arbitration career, I suppose presently everyone in the arbitration community has embraced virtual aspects of the work, such as virtual proceedings, conferences and webinars alike. This trend will continue to stay even after the pandemic ends. A positive impact that trickles down into the arbitration industry is that more young practitioners can use the online platform to collaborate with other members of the arbitration community. As the current Co-Chair of the AIAC Young Practitioners Group ("AIAC YPG"), I can attest to such development!

KA: As flagged by Irene, it would be impossible in the Covid-19 "new normal" for tech to not have significantly impacted my arbitration career. The move to virtual proceedings, conferences and networking events has meant a proliferation of more accessible career development opportunities for young practitioners – no matter where they are based. For example, during last year's Australian Arbitration Week we had the fortune of hearing from an array of eminent speakers from every corner of the globe. One panel on gender diversity in arbitration highlighted how a more virtual arbitration community could benefit the push for greater diversity. The combination of arbitration tech and Covid-19 has in many ways, removed the isolation of being an arbitration practitioner "down under". Suddenly, we can participate in both virtual hearings and virtual professional development opportunities without the long-haul flight (even if the time difference can be cruel!).

MF: Both Irene and Keilin are making a very interesting point linking arbitration tech and Covid-19 to a push for greater diversity, such as gender and age diversity. Although I generally like to see the glass half full, I am not entirely convinced. The pandemic might also be bad news for diversity. Whilst it is true that we have seen a widening of the pool of speakers (and attendees) at events, networking has become more difficult for junior members of the arbitral community in a fully online environment. We should also not neglect the fact that there is unequal access to affordable and reliable technology in all parts of the world.

On a more personal note, arbitration tech and the post-pandemic virtual reality have had an impact on my work in many ways. A notable example is the 2020 QMUL/W&C International Arbitration Survey on which I have been working. The twelfth empirical study of the School of International Arbitration has been inspired by these tech developments. It included, *inter alia*, questions on the use of information technology in arbitration, remote participation in hearings and other forms of interactions, as well as data protection and cybersecurity issues in the conduct of arbitrations.

ND: I share the sentiments of my Blog's colleagues on this issue. In my view, the recent emphasis on arbitration tech has had a "net positive" impact. In particular, as we seek new opportunities for the international arbitration community to encourage diversity and inclusiveness, arbitration tech has certainly been a helpful tool. I have seen this in my own work on the intersection of international arbitration and human rights. But, as Maria aptly underlines, not all communities have access to some or all of these tools. This is a new challenge that I hope that the international arbitration community takes on in the coming years – that is, acknowledging and seeking to respond to these access barriers with broader efforts to build a more inclusive professional environment.

3. *What new tools in the arbitration tech toolbox would you like to see?*

ND: I take a simple view on these issues. In general, we all benefit from new tools (or new iterations of old tools) that can either enhance how we communicate with our team and clients or ensure the highest levels of data privacy and security for our clients. Ultimately, my hope is that we see continued innovation on both of these fronts in the coming years, particularly because the international arbitration field looks to be adopting more of hybrid in-person / virtual approach for post-pandemic professional activities.

4. *Artificial intelligence in arbitration: Yea or Nay?*

KA: I will go with "sometimes". I think there is clearly real scope for artificial intelligence ("AI") to improve arbitration, particularly from an efficiency and cost perspective. For example, the use of AI for e-discovery appears to be a welcome development. However, I am far less sold on the possibility of AI-arbitrators replacing human beings. Whilst we obviously want arbitrators to adjudicate objectively and dispassionately, legal decision-making surely requires some level of cognitive and emotional intelligence that AI does not possess (at least not yet…).

MF: I would say "Yea" but I cannot resist the temptation to go with the favourite lawyers' answer: "it depends". ?t depends on whether, on the one hand, it concerns AI tools for legal research and tools for facilitating the procedure (e.g. technology assisted document review) or, on the other hand, whether it concerns AI tools of predictive justice. With regard to the first, "Yea" comes more naturally with the only caveat being that AI tools are not always affordable. Otherwise, anything that could enhance efficiency should be embraced. With regard to the use of AI tools in the adjudication process, we need to exercise caution. We are certainly not there yet and the questions raised are of a complexity that do not allow for black or white answers.

5. *Finally, please share one arbitration tech prediction of yours for 2021.*

IM: This is my favourite section indeed as I get to gaze into the crystal ball, metaphorically speaking of course! Considering the necessity of conducting business virtually and the demands from stakeholders of the ever fast-paced of arbitration industry these days, I predict there will be proliferation of not just virtual arbitration protocols ("VAPs") but cross-institutional VAPs will also be possible in the near future. Additionally, arbitral institutions will play a prominent role in cybersecurity and data protection in international arbitration as elucidated by one of our contributors.

KA: In addition to the inclusion of VAPs in institutional rules (as predicted by Irene), it will be interesting to see whether parties drafting arbitration agreements in 2021 expressly refer to virtual proceedings and the use of other arbitration tech in their arbitration agreements. Whilst such references were, in practice, relatively rare prior to COVID-19, 2021 might be the year parties seek to identify in some detail the extent to which they consent (or do not consent) to the use of particular arbitration tech.

MF: My new year's resolution was to refrain from any predictions – this was a key takeaway lesson in 2020. I fully agree with Keilin and look forward to seeing whether virtual arrangements will become the norm and if so, how this might be reflected in dispute resolution clauses. Cybersecurity considerations are currently somewhat overlooked, but they will come to the fore. To this effect, as Irene noted, arbitral institutions have a significant role to play. One final thought is that 2021 will hopefully be the year when electronic submissions become the default option – thus a more sustainable year!

ND: I, too, try to avoid predictions! But if I had to read the tea leaves, as they say, I see a convergence between the newfound emphasis on arbitration tech and efforts to encourage a "greener" international arbitration community (as discussed on the Blog). For example, as we look to encourage VAPs, as Irene highlighted, such efforts can facilitate the role of our community in

promoting sustainability and broader environmental goals. Electronic filings, virtual moots, and other related efforts are all part of encouraging sustainability in our community, which I hope that we will see more of in 2021.

We look forward to seeing if your arbitration tech prediction comes true!

Further interviews in this series of Interviews of Our Editors are published here.

_____

To make sure you do not miss out on regular updates from the Kluwer Arbitration Blog, please subscribe here. To submit a proposal for a blog post, please consult our Editorial Guidelines.

Profile Navigator and Relationship Indicator
Includes 7,300+ profiles of arbitrators, expert witnesses, counsels & 13,500+ relationships to uncover potential conflicts of interest.

Learn how **Kluwer Arbitration** can support you.

This entry was posted on Friday, April 23rd, 2021 at 8:00 am and is filed under Arbitrator Intelligence, COVID-19, Cybersecurity, Discovery, Interview of our editors, Technology, Virtual hearings
You can follow any responses to this entry through the Comments (RSS) feed. You can leave a response, or trackback from your own site.