

Kluwer Arbitration Blog

#FOTA22: To Boldly Go Where No Arbitration Conference Has Gone Before

Sean McCarthy, Elisabeth Zoe Everson (ArbTech) and Sabine Van Haecke-Lepic (CMAP – Médiation et Arbitrage) · Monday, October 3rd, 2022

On the morning of Friday 16 September 2022, to the sound of the Star Wars theme, the first edition of the [Future of Technology in Arbitration 2022](#) conference, a.k.a. FOTA22, officially began. Delving into many interesting topics, the organizers ensured plenty of opportunities for the participants to have an active say in what was being discussed. [Alexandra Sidossis](#) (4-5 Gray's Inn Square) guided the audience through voting in multiple surveys on topical questions such as the future of the use of holograms in arbitration hearings. In between discussion panels, six legaltech companies were interviewed and presented their technology in the FOTA Showcase, as chosen by a panel of eminent arbitration practitioners.

Holograms or Avatars? Take your Pick!

The first panel of the conference, titled “*Help me Sophie Wan Kenobi, You're My Only Hope*”, opened with [Brandon Malone](#) (Scottish Arbitration Centre) joining as probably the very first live hologram participant in an arbitration conference. Dialing in from the Scottish Arbitration Centre itself, he helpfully explained to the audience the experience from his point of view: he could see and accordingly face and address both [Paul Cohen](#) (4-5 Gray's Inn Square), with whom he shared the stage, and the audience.

Needless to say, the hologram experience was very different to the cartoonish-looking avatars we currently experience in the Metaverse, and one wonders what the possibilities of its use in international arbitration (or dispute resolution more generally) might be. Interestingly, invited to vote on the topic, the majority of the audience thought appearance by hologram appropriate for remote hearings, and that by 2030, we will have hologram witnesses and possibly also hologram hearings.

Metaversal Arbitration – Yay or Nay?

As part of the next panel, “*Dr Cohen in the Metaverse of Madness*”, [Colin Rule](#) (Mediate.com & Arbitrate.com), joining via videoconference, provided an introduction to the concept of the Metaverse, following which [Lester Schiefelbein](#) (Schiefelbein Global Dispute Resolution) took the

audience into the future. Looking at what the arbitration process may look like in 20 to 25 years, he explained that hearings could be neither in-person nor virtual, but conducted through satellite links to anywhere on the globe. Discussing the current developments in this field, Schiefelbein touched upon Elon Musk's [Starlink plans](#), as well as Apple's upcoming launch of a [satellite phone feature](#) on its new iPhone. Finally, he commented on how such developments may influence the organization of arbitral institutions, advancing his belief that each major city may in the future have an arbitration center, as all that will be required will be a satellite link.

Next, [Dana MacGrath](#) (MacGrath Arbitration) shared her recent experience of being in the Metaverse in the context of a Young ICCA Mentoring Programme event on professional development. She expressed that the cartoonish look of the avatars might have an influence on the credibility of the witness. However, not necessarily in a negative way, as avatars neutralize the body language many of us tend to focus on (perhaps excessively) during in-person hearings. This intense scrutiny may ultimately be inaccurate and unduly influenced by unconscious biases, thus taking the attention away from the actual content of testimony. To some extent, we have seen the neutralization of body language through the use of Zoom, which took away *inter alia* the physical intimidation factor, *i.e.* a person's height or build for example.

With reference to the virtual hearings conducted during the outbreak of COVID-19, [Duarte Gorjão Henriques](#) (Victoria Associates) pointed out that while we have found the solution to overcome distance in space, we appear to still struggle with distance in time, *i.e.* coordinating between different time zones. He further shared that he did not believe in the use of avatars, although he noted their potential utility in delicate contexts where anonymity is desired, such as corruption whistleblowers, akin to practice in sexual offence trials before some national courts.

[Ekaterina Oger Grivnova](#) (Allen & Overy) lauded the diversity of views with respect to certain aspects of the Metaverse. She also expressed her keen interest in having hearings in the Metaverse, which could feel realistic, their acceptance being only a matter of practice and habituation. She continued by explaining that the legal profession will need to, in turn, address (i) new technologies, such as NFTs and cryptocurrencies., and (ii) the challenges these technologies pose, including but not limited to anonymity, detachment from national legal orders, and complications vis-à-vis procedural issues, such as serving notices. While some of the disputes arising from the new reality may be conceptually similar to the ones we know today, there will also likely be novel categories of disputes.

Droning on...

In "*Game of Drones*", [Kelby Ballena](#) (Allen & Overy) spoke about the use (and usefulness) of drones, the many industries affected, the types of data drones are capable of collecting, and the fact that they address possible security concerns faced by humans when venturing into high-risk industrial environments. Examples of data collected by drones he pointed out included magnetic anomalies, movement, speed, temperature, and facial recognition.

Ballena also examined the rules and regulations, restrictions, and possible security concerns (such as how the information collected by drones is used). Given the size and expected growth of the business, he recommended that legal professionals acquire a good understanding of the field and related challenges. Indeed, disputes concerning drones are becoming the bread and butter of the

legal profession and can only be expected to become more prevalent in the near future.

The (Block)Chain Gang

One of the major talking points of the conference was the future of arbitration practice and the new form or format it could take in the context of smart contracts, Web3 and Industry 4.0.

[Dilpreet K Dhanoa](#) (Field Court Tax Chambers) moderated the discussion by inviting the participants to elucidate and question the new methods of dispute resolution that may be enabled by smart contracts and other blockchain processes. Will we see a further rise in blockchain dispute resolution mechanisms like [Kleros](#)? Are these types of blockchain-powered solutions appropriate in traditional arbitration? Are we moving more towards mixed or hybrid modes to resolve disputes in the future? Will we soon see arbitration in the Metaverse?

[Andre Guskow Cardoso](#) (Justen, Pereira, Oliveira & Talamini) underlined some key principles of blockchain-related dispute resolution. Cryptocurrencies remain the tip of the iceberg in terms of the breadth of blockchain technology. Tokenization of assets will continue to proliferate and the features of smart contracts such as self-executability and immutability will lead to the automation of obligations and value exchange in a majority of contracts. This will have huge ramifications for many industries, including the financial sector, commodities, and public service delivery.

[Paul Cohen](#) (4-5 Gray's Inn Square) represented the crypto/blockchain skeptic and shared his critiques of the subject: firstly, that disputes arising from the crypto industry possess no more unique aspects meriting discussion than any other technology or complex practice area; and secondly, that in the context of blockchain-enabled ODR processes, no current initiatives can be said to represent a paradigm shift in how arbitration is practiced.

[Amanda Lee](#) (Costigan King) echoed Cohen's comments with regard to how crypto disputes are similar to any novel subject matter in arbitration, and that due to its inherent adaptability, current processes are well-equipped to deal with them. Both Lee and [Rekha Rangachari](#) (New York International Arbitration Center) further discussed on-chain vs. off-chain arbitration processes and whether the former could be considered true arbitration, and by extension could result in enforceable awards under the NY Convention. Some on-chain features like random selection of arbitrators and solely code-based awards were examples cited for this uncertainty.

[Xavier Oustalniol](#) (StoneTurn), as the financial and investigative expert on the panel, talked through many unique and not-so-unique issues that crypto has brought about in an accounting and valuation context. As a predominantly unregulated industry, the parallel growth of speculation and fraud is noticeable. Tracing the movement of funds on the blockchain is easier than in traditional banking but the default anonymity of wallet owners and sophisticated laundering techniques remain difficult for investigation and enforcement. Even crypto token and NFT valuation remains heavily debated due to the volatility of 24/7 markets and the lack of clarity of the nature of many tokens – while some are analogous to securities, others are more comparable to commodities, and yet others are completely divorced from traditional asset forms.

Will Artificial Intelligence Take us to Mars?

The last panel, “*Life on Mars?*”, moderated by [Amrit K. Dhanoa](#) (4-5 Gray’s Inn Square), addressed the increasing relevance of artificial intelligence (“AI”) in dispute resolution. [Julian Lew KC](#) (Twenty Essex), [Patricia Shaughnessy](#) (Stockholm University), [Hugh Carlson](#) (Three Crowns), and [Catherine Rogers](#) (Università Bocconi and Arbitrator Intelligence) were joined by Dr [Mimi Zou](#) (University of Oxford), who opened the debate by defining what AI is and differentiated between weak and strong AI. Carlson then touched upon the question of whether technology truly helps increase productivity. With briefs getting longer and more elaborate, automating certain tasks may not necessarily mean less work for lawyers. In the same vein, Lew took the audience back in time and recalled typewriters and word processors, when wanting to add or delete a paragraph or a sentence meant physically altering or retyping the entire document. The same issue certainly no longer arises but are we better for it? Is the end cost still higher for the users?

Rogers introduced Arbitrator Intelligence, explaining that its aim is to mimic information one might receive when contacting a colleague, and noting that it was inspired by US judicial data analytics over the past decade. Due to the predominance of award confidentiality and the differing value of precedent, Rogers indicated that analytics in arbitration have not (and arguably should not) reach the ubiquity seen in US litigation. She argued that AI is good at following and implementing a fixed ruleset but is not so proficient at creating new rules or differentiating new occurrences from prior decisions/structures. By contrast, that skill is one uniquely possessed by a competent human arbitrator.

Next, Shaughnessy discussed the ethical issues surrounding the future use of AI in dispute resolution and took as a principal example the documented biases revealed in the context of AI facial recognition used by law enforcement. She further argued that the future trends in arbitration will be unlikely to favor AI decision-making since it is not a major factor in terms of why users choose arbitration over litigation today. Carlson agreed with Shaughnessy’s points but shared a more nuanced view, noting that US litigation is being transformed by predictive data analytics and may soon have AI solutions that will draft briefs to be reviewed by lawyers. These kinds of advances may have a strong impact on clients’ preferences.

Zou closed the discussion with a prediction that AI will certainly gain a stronger foothold in dispute resolution, with China currently being the most advanced user. However, in the decision-making context, AI will remain in a support function to assist neutrals rather than replacing them. Independence and impartiality are critical to a neutral’s position in a dispute and there may always be existential problems in ensuring AI possesses those required attributes.

Until next time...

The future of technology in arbitration is now. The practice of arbitration is confronted with new challenges, as a result of which there is a need for redesigned methods and offers that are adapted to the new environment. FOTA22 left us with food for thought about what the future will look like – and who knows, dispute resolution may look very different when the next Future of Technology in Arbitration takes place!

For more information on FOTA22, including its list of sponsors, please visit [the website](#).

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The graphic features a black background with white text and a circular icon. The icon depicts a group of five stylized human figures, with a magnifying glass positioned over the central figure. The background is accented with horizontal lines in blue and green.

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