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Or scroll down to read the paper version of Hilary Heilbron QC's lecture "The Impact of Societal and Global Changes on the Practice of International Arbitration: Past, Present and Future".

UNIDROIT LECTURE

Introduction

1. It is my very great pleasure and honour to give the Eighth University of Roma Tre/Unidroit Annual Lecture on International Arbitration this afternoon: I am only sad that I cannot be there with you in person. I shall have to virtually taste the delicious pasta and visualise the Colliseum – another time I hope!

2. Having spent a week learning about international arbitration at this excellent Roma Tre/ UNIDROIT course, I hope it is not too much of an endurance test for you all to listen virtually to a lecture on international arbitration, as the conferral of certificates and no doubt a glass or two of prosecco awaits you.

3. As you know I have chosen as my topic "*The Impact of Societal and Global changes on the Practice of International Arbitration – past, present and future*"- a vast canvas spanning many centuries and one I cannot possibly fill in the time available. The topic has a particular resonance in the context of the recent pandemic and how international arbitration has had to adapt to meet the challenges presented by Covid. It is by no means the first time it has had to do so.

4. It has been and continues to be an inherent element of human relations over the ages that from time to time they become disputatious - whether the source of the dispute is one relating to family issues, property issues, commerce, or the provision of services and whether the dispute is in the context of states rather than business or personal matters.

5. Fortunately, unlike animals, human beings tend for the most part not to settle their disputes by way of physical violence. There is thus a long history from the early days of the Roman Empire to today of all sorts of disputes, redolent of the contemporary

times in which they arise, being resolved by an arbitrator or arbitrators, a third party neutral.

6. It is tempting in this lecture to trace the history of arbitration from a time where life was simpler: where records were made on stone tablets, through the use of the quill pen to the photocopier and yes - the most arbitrally egregious of all inventions - e-mails. Today life has become global, instant and complex and everything associated with it has taken on the same mantra.

7. International arbitration has, like many other things, evolved against the background of social and global changes. In England, for example, where I come from, it has evolved from the days of the influence of Roman law, through Anglo-Saxon law to the common law; from the local assemblies or meetings in fairs and marketplaces which acted as a form of arbitration deciding or settling disputes based on customary laws; to the emergence of individual arbitrators, and additionally umpires, using dispute-resolving techniques and the emergence of a lex mercatoria.

8. It progressed through the industrial revolution and increased literacy to something more akin to what we know today, propelled also by the increase in international trade and the emergence of trade associations with their standard contracts and arbitration clauses as well as the comparative costs and delays of the court process.

9. The first Arbitration Act was enacted in England 1648 and the first textbook on the topic published in 1694. In an enlightenment not seen only a few decades ago, it was not uncommon occasionally in previous centuries to have female arbitrators.

10. In the Arbitration Act of 1889, we see the first signs of modern arbitration with mandatory enforcement of arbitration submissions and the provision for enforcement of awards as if a judgment, enforcement being one of the key drivers of arbitration in the modern era as well as statutory provisions for some judicial supervisory jurisdiction.

11. In 1891, the progenitor of the modern LCIA was established as "The City of London Chamber of Arbitration". It was to sit at the Guildhall in the City, under the administrative charge of an arbitration committee made up of members of the London Chamber and of the City Corporation.

12. As the Law Quarterly Review ("LQR") was to report at the inauguration of the Tribunal a few years later:

> "*This Chamber is to have all the virtues which the law lacks. It is to be expeditious where the law is slow, cheap where the law is costly, simple where the law is technical, a peacemaker instead of a stirrer-up of strife*."

13. Profound and laudable ambitions: not entirely fulfilled alas.

14. International arbitration also came to be practised between states with early examples being the Jay Treaty of 1794 between the United States and Great Britain providing for three mixed commissions to settle outstanding issues between the two countries; and the Alabama Claims arbitration in 1871 in which the United States alleged that the British Government had violated its duty to respect neutrality during the American Civil War.

15. These and other international arbitrations led to the recognition of the need for the strengthening of systems of international dispute resolution—especially international arbitration. The PCA was established by the Convention for the Pacific Settlement of International Disputes, concluded at The Hague in 1899 during the first Hague Peace Conference and revised at the second Hague Peace Conference in 1907. The PCA provided the first global mechanism for the settlement of disputes between states.

16. The Conference had been convened at the initiative of Czar Nicolas II of Russia "*with the object of seeking the most objective means of ensuring to all peoples the benefits*

of a real and lasting peace, and above all, of limiting the progressive development of existing armaments."

17. Today the PCA provides services for the resolution of disputes involving various combinations of states, state entities, intergovernmental organizations with 122 contracting parties, and private parties.

18. However, I propose this evening to resist any further temptation of a historical tour prior to the First World War, but to take three periods in more recent history which have seen arbitration adapt to societal and global changes in a dramatic way and examine how this came about:

i. First, the Roaring 20s or *années folles*, after the First World War, when arbitration took on a more universal approach;
ii Second, the latter part of the last century which saw consolidation, and increase in the use of arbitration following the New York Convention; and,
iii. Third, the 21st century: now and looking ahead – a period of exponential growth and technological advancement.

19. I shall concentrate primarily on commercial arbitration with which I am most familiar.

The Roaring Twenties

20. The First World War was a cataclysmic event on so many fronts, but its aftermath brought renewed vigour in numerous areas, some successful: others less so. By the end of the First World War, the population had reached 2 billion, just over a quarter of today's global population.

21. The 1920s was a decade of economic growth and widespread prosperity driven by recovery from wartime devastation and deferred spending, a boom in construction, and the rapid growth of consumer goods such as automobiles, then still in their

infancy, and electricity in North America and Europe and a few other developed countries. However, this was coupled with increasing protectionism in the United States and prohibition which led to a decreases in international trade on some fronts for a time. Of course in the next decade things went into reverse with the Great Depression.

22. Other innovations which we take for granted today were coming on-stream. In 1927 Charles Lindbergh performed his first nonstop flight from New York to Paris and conceived the modern non-military air industry. But for the most part international transportation of goods and people remained by boat and national transport by steam train. The first radio news broadcast was made in August 2020. Television was a way off.

23. During the First World War there had been some progress on the arbitration front. For example, in 1915 the Chartered Institute of Arbitrators was founded and in 1917, the Arbitration Institute of the Stockholm Chamber of Commerce ("SCC").

24. At the same time after the First World War there was an incentive to provide for global institutions in the hope of preventing further world dissension. Thus, albeit ultimately flawed, in 1920 the League of Nations was formed. This, of course, led to the original formation of UNIDROIT as an independent intergovernmental organisation, later re-established.

25. At a business level, in 1919, the International Chamber of Commerce ("ICC") was set up by its founders as "*merchants of peace"* when, in the aftermath of the First World War there was no world system of rules governed trade, investment, finance or commercial relations. Without waiting for governments to fill the gap, ICC's founders acted on their conviction that the private sector is best qualified to set global standards for business.

26. So how did the practice of international commercial arbitration evolve and react to this new era of peace and prosperity?

27. In the 1920s we saw the establishment of two major arbitration institutions, the ICC Court of Arbitration in 1923 and the American Arbitration Association ("AAA") in 1926. The former had at its core the aim of resolving disputes between traders of different countries rather than domestic arbitrations. The latter was a result of the merger of the Arbitration Society of America and the Arbitration Foundation. It was the first national arbitration institution in the United States and founded under Federal law following the enactment of the United States Arbitration Act the previous year.

28. In addition, attempts were made to provide for enforcement of international arbitration awards, namely, the 1923 Geneva Protocol and the 1927 Geneva Convention. The former established the international validity and enforceability of the arbitral clause such that Contracting States had to refer the parties to arbitration if seized of a dispute where the parties had agreed to arbitrate. The latter regulated the enforcement of arbitral awards. But the Treaties proved inadequate. Their field of application was limited, the parties had to be subject to the jurisdiction of the different, and the arbitral award likewise had to be made in a Contracting State.

29. It gave rise to various problems such as the practice of double-exequatur, where it was necessary first to obtain leave from the country where the award was made to ensure its finality before an attempt could be made to enforce the award.

30. A good barometer of how international arbitration reflected contemporary societal needs is to consider the extent of arbitral activity in those days. In its first 18 months of existence the ICC Court of Arbitration received 68 cases from 17 countries and it took another 50 odd years to reach the magic number of a total of 3,000 cases, an average of approximately 60 cases a year.[1]

[1] ICC Dispute Resolution Bulletin Extract 2020, Issue 2, Mikaël Schinazi, 2*The Three Ages of International Commercial Arbitration and the Development of the ICC Arbitration System*".

31. A useful way of considering the needs and aspirations of potential international arbitral participants a century ago is to look at the 1922 ICC Rules of Conciliation and Arbitration. As will be seen there was a strong emphasis on conciliation with rules being provided for conciliation directly by the Administrative Commission of the ICC. This was reminiscent of arbitration over the ages from Roman times where there existed both the binding arbitration agreement or *comprosium* and settlement via *bonus vir,* what we would now call mediation, as well as through later periods in English history where the mediation and arbitration roles were often interchangeable.

32. The 1922 ICC Rules provided a separate set of rules for cases where one party was a national of a country which did not provide legal sanction for execution of arbitration awards and another set for where both parties came from a country which did. However, the differences were limited, save for the need for the latter to provide for the submission to be to a legal arbitration and be in writing. In the 1927 revised version, the two sets of rules were amalgamated. Let us look at a few examples from the 1922 Rules to get a flavour of the process in the 1920s.

i. First, a Request for Arbitration and all subsequent communications had to be filed through the National Committee or the Organization Member: not to the Secretariat. Obviously in those days this was done by registered post or delivered by hand – no e-mails. Likewise, all communications and notifications between arbitrators and parties had to go via the same route save in urgent cases. This may have been because of the length of time it would otherwise have taken for communications to be received by the ICC Court.[2]

ii. Second, perhaps music to the ears of arbitrators, there were no, what is now called Terms of Reference, in the 1922 version of the ICC Rules save in the version of the rules where the award was capable of being enforced in the

[2] E.g. Articles IX and X (or Articles XXIX and XXX) of the 1922 Rules and Articles 6-8 of the 1927 Rules.

countries of both parties. It was called a submission and was drawn up by the Court of Arbitration: not the Tribunal and only the parties had to sign it.[3]

iii. Third, the presumption was that arbitrators acted pro bono save for their expenses except in those countries where it was recognised that arbitrators would be customarily paid. The task of acting as arbitrator being more a matter of honour and status in the relevant business community. They were chosen from a list maintained by the ICC rather than the parties, the national committees providing a list of "*technically qualified arbitrators*". This benevolence did not last long and by 1927 the rules provided for the payment of arbitrators' fees when allowed.[4]

iv. Fourth, there was no requirement to give reasons in an award – just to render the decision in writing, but in the 1927 Rules the need to give reasons was in the discretion of the Court of Arbitration which would have due regard to the country where the award might have to be enforced.[5]

v. Fifth, in the non-legally sanctioned arbitration, the arbitrators were to render their awards as *amiable compositeurs;*[6] a recognition of the historical tendency towards equitable resolution of disputes .

vi. The most interesting aspect related to enforcement. Under the 1922 Rules (both sets), parties were only bound "*in honour to carry out the award*". If a party failed to do so within 30 days it risked a request being made via the National Committee or Organizing Member that the ICC Court should notify the Chamber of Commerce or business organization to which such defaulting member belonged to apply "*such disciplinary measures as it thinks fit and proper under the circumstances in respect of the defaulting member*."

[3] (Article XXIV) Articles 14-15 of the 1927 Rules.
[4] Article XIX of the 1922 Rules and Article 22 of the 1927 Rules.
[5] Article IV of the 1922 Rules and Article 16 of the 1927 Rules.
[6] Article VII.

The Court was also entitled to request that the name of the defaulting party be published in the official publications of the ICC and those of the National Committees together with the text of the award remaining unexecuted. Shaming parties into paying up seems to have been the order of the day!

33. By 1927, the provision was amended, but although an award became binding, it did not provide for finality. The party was given 30 days to comply and, if not, while preserving other means of enforcement the ICC court, the successfully party then had to then ask the Chamber of Commerce or any other organisation to which the recalcitrant member belonged to take "*suitable measures*."[7]

34. The first ICC Rules were published in English and French - now they appear in 9 languages from Chinese to Romanian.

35. So what can we learn from these early ICC Rules? The starting point I believe is the establishment of the ICC itself in Paris, albeit originally this was not a permanent location. Its purpose, as officially stated, was to secure harmony of action on all international questions affecting commerce and industry, and to promote peace, progress and cordial relations among countries and their citizens by the co-operation of business men (no women of course!). This extended to all forms of international trade from shipping to financial.

36. It seems clear that arbitration was something which was part of the original conception where matters concerning differences of opinion on international trade contracts would be decided.[8] In France, for instance, there had been considerable jurisprudence in the eighteenth and nineteenth centuries in relation to arbitration at an international level.[9]

[7] Article XX of the 1922 Rules and Article 25 Rules.
[8] The International Chamber of Commerce by a special correspondent "Advocate of Peace".
[9] A Brief Primer on the History of Arbitration, Daniel Centner and Megan Ford.

37. If there was to be international co-operation on trade it had to be recognised that trade does not always run smoothly and a means of resolving disputes was therefore an integral part of such vision. With new horizons opening up, a rules based but flexible and private means of resolving disputes (unless of course you were publicised as a recalcitrant party) was an inevitable concomitant of the aspirations of the founders of the ICC itself, namely to move the international trading community into what had then been hoped would be a peaceful twentieth century.

38. The steady but unremarkable progress of international arbitration in this period as evidenced by the ICC Court of Arbitration and the accompanying arbitration rules (statistics are difficult to come by for other institutions or for ad hoc arbitrations) reflects the world order – the Great Depression which inevitably impacted on trade; the Second World War and the lack of an effective means of enforcement, the last of which brings me to my second period. In turn this is presumably reflected in the limited number of contracts in which arbitration clauses were inserted.

39. Arbitration in the first half of the last century was much less sophisticated than the international arbitration which we know today. Its initial principal aim was to apply moral pressure and sanctions affecting the party's business and business reputation as an alternative method of resolution of disputes to courts of law. Over time the beginnings of its metamorphosis into something more structured had begun, but few nations had effective judicial arbitral support systems in the first half of the last century.

40. Nonetheless, the progress made was a first step in providing alternative dispute resolution remedies for trade between merchants of different countries in an era of expectant growth in international trade.

The Second Half of the 20th Century

41. The 1950's saw the world emerging from the Second World War. There again followed considerable post-war reconstruction and rebuilding. The Marshall Plan

underwrote some of the European prosperity with its rebuilding plan for Europe. Growing consumer demand, once more led by the United States, and high employment levels led to a post-war economic boom with higher standards of living. Increasing automation and infrastructure spending added to the boom. Telexes and later faxes enabled instant written communications.

42. At a political level, the United Nations was established. But it was also the time of the Cold War and military preparedness and expenditure.

43. As the second half of the century progressed we saw what has been described as the white heat of technology – great advances and innovations in technology, medicine, manufacturing processes. Television and fridges and other consumer goods became mainstream. Many households in the developed world owned cars and oil became an invaluable commodity leading to refineries and other infrastructure around the world to tap into this liquid gold. In turn these goods required parts and materials transported from all over the globe. Air travel became the norm for personal international travel whether for work or pleasure. Goods were transported by planes as well as bulk carriers. Space travel started and we even saw the first man on the moon. By the end of the century the beginnings of our modern electronic world beckoned with the first mobile phones and rather primitive – by today's standards - personal computers. Alongside goods, financial services and financial products became far more sophisticated.

44. The prospect for an increase in cross-border disputes was inevitable. National courts of course provided remedies, but the attractions of arbitration based on consent of the parties, the choice of a neutral by the parties, the privacy, the absence of constrictive precedent, the quicker and cheaper resolution of disputes, were all attractive attributes of the process. More and more contracts started to include arbitration clauses. The complexity, range and size of cases grew. Parties needed a more sophisticated and generally acceptable and pre-known process, even if many arbitrations remained ad hoc.

45. So how did the practice of arbitration meet the challenge of these developments in the second half of the last century?

46. I believe there are 5 main ways in which international arbitration adapted to the potential for a greater number of international disputes being resolved by arbitration in this period.

47. **First,** recognition and enforcement of awards. One of the problems besetting international arbitration remained enforcement, a problem which likewise blighted court decisions.

48. Business is ultimately about money and an award without the fruits of victory is of little use to the balance sheet and ability to invest. As the song goes in the movie Cabaret "*money makes the world go around".*

49. The deficiencies of the Geneva Conventions led ultimately to the New York Convention in 1958 with which we are all familiar. The ability to provide a speedy and effective means of enforcing arbitral awards avoiding any review of the merits is the cornerstone of modern arbitration. Today nearly 170 countries have signed the New York Convention. The mere fact of the efficiency and expectation of enforcement is in itself a deterrent to non-compliance with, it is said, only some 11% of awards not being voluntarily complied with. I need not dwell on the details of the New York Convvention – they are familiar to all, and those attending the course, but without it, I very much doubt arbitration would be where it is today.

50. **Second**, national statutory frameworks. The trend towards a more uniform and international approach to arbitration as a method of settling disputes arising in international commercial relationships continued, exemplified by the introduction of the Model Law in 1985, revised in 2006, which was developed to address the disparities in national laws on arbitration. The Resolution of the General Assembly of UNCITRAL (United Nations Commission on International Trade Law) in December 1985 noted.

"Convinced that the establishment of a model law on arbitration that is acceptable to States with different legal, social and economic systems contributes to the development of harmonious international economic relations… [and recommended] that all States give due consideration to the Model Law on International Commercial Arbitration, in view of the desirability of uniformity of the law of arbitral procedures and the specific needs of international commercial arbitration practice."

51. Its raison d'etre, as explained in the Explanatory Notes, was that the Model Law constituted "*a sound basis for the desired harmonisation and improvement of national laws*". Adding that the process reflects a worldwide consensus on the principles and important issues of international arbitration practice at being accepted as representing the accepted international legislative standard for a modern arbitration law.

52. The Model Law covers all stages of the arbitral process from the arbitration agreement to the recognition and enforcement of the arbitral award and sets out the key provisions which a national arbitration statute could adopt, including:

- provisions relating to the form of arbitration agreement;
- the appointment and composition of the tribunal and its jurisdiction;
- interim measures and preliminary orders;
- recourse against an award by setting aside and recognition and enforcement which effectively mirrored Article V of the NYC;
- and matters relating to the conduct of the proceedings and the making of the award.

53. Underscoring the provisions as to the conduct of the arbitration is the ability of the parties to agree on the procedure.

54. As a result, many jurisdictions adopted or adapted the Model Law when they revised or introduced a new arbitration statute. England, for example, in its 1996 Act, adopted a sort of hybrid, e.g. including an appeal on law which has attracted some criticism.

55. **Third**, the expansion of arbitration institutions, nationally and regionally to administer not just domestic, but also international arbitrations. In 1956 the China International Economic and Trade Arbitration Commission ("CIETAC") was established, based in Beijing. In 1985. the Hong Kong International Arbitration Centre ("HKIAC") was established, based in Hong Kong. In 1991, the Singapore International Centre ("SIAC"). In London, the Court of Arbitration became the London Court of International Arbitration: a recognition that arbitration had evolved from a mainly domestic form of dispute resolution to an international form of dispute resolution.

56. In 1996, the AAA established the ICDR (International Centre for Dispute Resolution) specifically to deal with the administration of international disputes. In addition, there appeared many smaller institutions, such that today many countries and regions have their own national arbitral institutions: from Mongolia to Mauritius to Malaysia; from Shanghai to Sri Lanka to South Korea and many more. This enhanced regional recognition of arbitration has encouraged regional understanding of the process and in turn the potential for expansion of arbitration both domestically and internationally.

57. **Fourth**, the updating of institutional rules to meet the needs of its clients. This has been an ongoing process from the start of arbitration and continues today. With the proliferation of new arbitral institutions each began to vie with each other to offer something different. The ICC, for example, has always marketed the Terms of Reference and scrutiny of the award as something unique to the ICC. Many of these rules adopted or were based on the UNCITRAL Model Rules introduced in 1885 and subsequently amended.

58. **Finally**, the legal fraternity. Firms of lawyers, always ready to find new areas of lucrative work, starting opening up specialist arbitration groups in their firms which enabled them to sell specific expertise to their clients, a process which grew exponentially in the beginning of this century. At the same time American and other international firms started linking up to form conglomerate huge international firms with offices in various parts of the world, giving them a foothold to service clients from all global regions.

59. Again this has exploded further in the last twenty years, but the beginnings were there at the end of the last century. The consequence of course was renewed interest in the topic with more writings and more seminars as a form of networking and rainmaking. More practitioners also sought to become arbitrators. This increased interest in the topic. International arbitration became on trend and fashionable and marketable.

60. This all happened against a background of social change. The 1950s saw the dawn of the modern era in many ways with standards of living and expectations in education and elsewhere changing and improving. Women were beginning to reassess their role in society having by then become enfranchised in many countries and female pioneers were just beginning to make their mark.

61. In 1949, to take a personal example, my late mother, Rose Heilbron, a very famous female advocate of her time in England, became the first joint female Queen's Counsel in England and a few years later the first senior judge when she became what is known as a Recorder, a part time appointment. Throughout the 1960s she remained the only practising Queen's Counsel in England. But pioneers were also appearing in other fields of professional endeavour, though numbers initially remained small. She was a great advocate for women too and some of the things she would speak about, as recoded in the newspapers of the time, included equal pay for women – still not there! But her struggles are not for tonight – though I have written her biography for those who are interested, called Rose QC.

62. Let me however speak a little from first-hand experience about women! When I came to the English Bar in the 1970s there were still very few women practising in the commercial area, let alone in arbitration. I was the first women taken on in my set of chambers, a commercial set of chambers and started a practice in commercial law and litigation. I was rarely instructed by women and rarely saw another woman in a professional meeting. I did though act as counsel in the odd arbitration, but in those days mostly maritime arbitrations, but again there were no women around.

63. It was probably my generation that saw the first dent in the male bastions of city law firms and several of my contemporaries became the first female partner of major city firms, but it remained slow and unusual for many years. There were simply not enough women coming through the profession to create the waves needed to change things. Most of us just got on with it and had to shrug off any difficulties we faced.

64. As in arbitration generally of which I have just spoken, there was not then the impetus for women to move into arbitration: it was enough to be successful in litigation. It is only much more recently, as international arbitration has grown across the world, and more and more women are qualifying as lawyers, that we see more and more women naturally wanting to be involved in the area of law.

The Twenty First Century

65. So let me move to this century. The dreaded e-mails; What's App and mobile phones, social media, Zoom, Face Time, Instagram, Amazon and online shopping all now the norm. At the end of the last century no one could have envisaged the full extent of this electronic revolution with technological and scientific innovations to match viz. the vaccines.

66. We have also had a period of over 75 years of relative world peace and, although there have been recessions and local wars, overall globally there has been prosperity. Other nations, such as South Korea, have met the challenge to compete

in international trade with the more traditional developed countries and South Korea is now a technological and industrial powerhouse with Samsung, LG etc.

67. Global trade has become easier, mergers and joint ventures more common, third world countries have been able to build on their natural resources. Yet this increase in global trade has inevitably brought in its wake increases in disputes. The success of international arbitration has bred success with more companies choosing it as a means of resolving their disputes, such that there has been an exponential increase in the use of international arbitration to resolve disputes.

68. While we have the statistics for many of the arbitral institutions we do not have any for the huge number of ad hoc arbitrations that take place all over the world every day. For instance, in 2020, the ICC recorded 946 new cases, the LCIA 407; and SIAC 1005 new cases, though some of these may be domestic arbitration. These figures reflect the huge exponential period of growth for arbitration.

69. What has brought this about and how has the arbitral community reacted?

70. First, arbitral institutions have sought to meet the demands of its customers, with institutions amending their rules to make provision for expedited hearings or emergency arbitration to provide speedy results where appropriate; for consolidation of disputes; to cater for third party funding; electronic filing as well as e.g. the provision of platforms for the exchange of documents as introduced by the SCC.

71. Second, there has been a greater use of technology, with documents, correspondence, evidence, and submissions being produced more frequently electronically. This of course has brought with it the issues of the modern age such as data protection and cybersecurity. Climate change is also affecting how participants think, although as the latest Queen Mary/ White and White & Case survey shows this appears to be a welcome side-effect of participants' choices throughout the arbitral process, rather than a priority in and of itself.

72. Third, there has been added impetus towards global standards for practitioners with the various IBA Rules on evidence, party representation and conflicts of interest. This brings more certainly and uniformity without undermining the very flexibility of the process.

73. Fourth, the variety of options of seats and an ever increasing number of arbitral institutions gives parties a wider choice enabling those parties to use seats with which they are more familiar and comfortable rather than the traditional seats if they desire. This has not, however, diminished the popularity of the more traditional seats such as London; Paris, Stockholm, Geneva, Singapore and others.

74. Fifth, there has been an explosion in the number of firms, both national and international, now having dedicated teams and departments specialising in international arbitration, with arbitration not just being part of litigation, but a speciality in itself. This is the result of a recognition that clients are choosing international arbitration in preference to national courts in much greater numbers.

75. Sixth, there have been more seminars and conferences than hours in the day with the avowed aim of spreading knowledge about the topic but with the dual aim of networking.

76. Finally, third party funding has taken on a different role. Whereas traditionally it provided access to justice for those who could not afford it. Now it has become a business tool with companies using it to reduce the impact of litigation and arbitration on the balance sheet or buying up a portfolio of disputes to be funded in this way. The financial constraints have to an extent therefore been removed.

77. Together these advances and changes have all contributed to international arbitration as it is today.

78. So taking a retrospective perspective, one can say that, although not necessarily much cheaper or even quicker than national litigation, international arbitration

retains advantages over the latter for commercial clients such as: the choice of tribunal, the privacy, the flexibility of the process, a neutral forum, the easier enforcement. These are some of the reasons often given as to why businesses choose to arbitrate rather than to litigate.

79. All this has been a process of evolution with a coming together of civil and common law approaches, each constantly learning from and contributing to the other. It was not that long ago that cross-examination was anathema to many civil lawyers; and to us common lawyers, the thought of putting things in writing was thought to be less effective than persuasive oral advocacy and rare. I recall when I came to the Bar the great skill was putting one's client through direct examination when of course one could not ask leading questions. Now this never happens: it is all witness statements. But we have overall found a harmony and a mutual respect and we can learn from each other as well as make great international legal friendships.

80. One of the most significant changes for me, particularly in the last 20 years has been the increase of women in the profession and in arbitration. Whereas before, as I said, it was rare for me to meet another female in a professional context: now the reverse is rare. Women have made great strides in international arbitration and bodies such as Arbitral Women and initiatives such as the Pledge have all helped.

81. But above all the sheer number of exceptionally talented women means that it was inevitable that they would make their mark in international arbitration. Progress has been painfully slow and there is still a way to go.

82. However, we should not lose sight of the fact that this is yet another instance of international arbitration reflecting society generally. Businesses now expect to see women in positions in the law and arbitration. There are many women general counsel and in high positions in business who are demanding it. And as of 1 July this year we have women in many of the key and influential positions in Arbitration, Claudia Salomon as President of the ICC; Lucy Reed at ICCA; Meg Kinnear at ICSID, Jacomijn van Haersolte-van Hof at the LCIA, to name just a few – and there are

others. We also have women in several firms heading up their international global arbitration divisions.

83. So what next as we look into our crystal ball?

84. The Covid pandemic has been a wake-up call in every sense. Undoubtedly, more use will be made of virtual hearings, but we will learn to adapt. Social interchange is important and needs to be balanced against the saving of time and costs – and even climate change.

85. 50 years from now we are likely to see more use of AI and even robots, although the latest Queen Mary/ White & Case report seems to suggest the appetite for its use based on limited experience to date is not huge.

86. This is the reverse of a recent article in the Times[10] headlined "*Artificial Intelligence takeover could halve law jobs in 30 years*". The article quoted from a director of the Law Society who oversaw a recent report into AI who commented that by 2050, less than 30 years away, "*lawyers could find themselves having information and knowledge implanted directly into their brains",* which would reduce the need for advocates to shuffle through piles of paper files when referring to precedents in court. "*City firms could do well out of this*," he said.

87. And then there are robots! While undoubtedly some of the less complex tasks are going to be transferred away from human involvement, technology has a long way to go. E-mail and case search terms produce a lot of irrelevant material. Will AI fix this? – I remain a bit of a sceptic. If it can reduce the number of documents to those which are actually referred to at a hearing, I will be impressed. But if and when A1 becomes mainstream in society I expect arbitration will follow.

[10] The Times 15 June 2021.

88. Progress over the last century has been extraordinary and the horizons for the future are literally limitless. Let us, for a moment, think back to after the First World War which I spoke about earlier when, for example, there was no commercial air travel and compare that with what happened only this week when we have Jeff Bezos and Richard Branson going for trips into space. How such endeavours will be reflected in international arbitration remains to be seen- virtual tribunals yes – but weightless tribunals – maybe a bridge too far.

89. In any event, back down to earth and let me finish by saying that I hope that the well-earned certificates which those listening who have attended this week's course are about to receive, will be given to you in a more traditional manner rather than implanted into your brain: though no doubt the celebratory drinks you may have afterwards could have some impact on your brains for a few hours.

90. So thank you for listening and enjoy the rest of the day.