

ICC Commission on Arbitration and ADR

PARIS MEETING 29 March 2022

Executive Summary Paris Commission Meeting Tuesday 29 March 2022, 9:00 – 16:00

1. Melanie van Leeuwen, Chair of the ICC Commission on Arbitration and ADR

Ms van Leeuwen welcomed to the Commission Meeting the nearly 250 members participating in person in Paris and a further 300 registered to participate virtually. The hybrid format facilitates participation by all Commission members globally and should therefore be the preferred format going forward.

Ms van Leeuwen took a moment to address the ongoing crisis in the Ukraine and shared with the Commission that the ICC global network is mobilised, working together with the Red Cross, UNICEF UNHCR, and the World Health Organization to support in any way it can. The Commission too is affected, with many Ukrainian and Russian members unable to be here today. In the spirit of the merchants of peace, we can only hope that the ICC at large and the NCs will soon have the opportunity again to focus on the promotion of peace and prosperity, and advancing the rule of law in international trade.

The Agenda ([Doc. 420-716bis](#)) and Executive Summary of the last virtual meeting of 23 November 2021 ([Doc. 420-715](#)) were both adopted.

2. The Evolution of the ICC Commission on Arbitration and ADR

Ms van Leeuwen recalled the origins of the Commission in 1920, and some of its key contributions over the last century. She underlined the responsibility of the Commission to identify and keep in line with new developments in its field, especially in today's fast-moving world. She addressed the [Terms of Reference of ICC Commissions \(ToR\)](#) for ICC Commissions as adopted by the ICC Executive Board, as well as the specific [Transitional Provisions](#) for this Arbitration Commission and the membership [Rules](#) established by the Steering Committee. She underlined that these ToR are not unique to this Commission, but apply to all Policy Commissions throughout the ICC.

Dr van Lith, Secretary to the Commission, explained that the new Rules have been established by the Steering Committee after having reflected on what the ideal composition of Commission's membership should be to achieve its mission. This necessarily had to begin with an [overview of the current composition](#): 916 members, including 690 NC-appointed delegates, 17 direct appointments (from jurisdictions with no NC), and 209 *ex-officio* members, concurrent with their mandates with the Court or the ADR Standing Committee. 112 of these members are dormant members, having never participated or contributed in any way to the Commission's work in recent years. Gender representation is far from reaching parity, with 70% male members. Although the membership can be considered global, the true regional distribution is dependent on the presence of ICC National Committees around the world.

Ms van Leeuwen recalled the mission of the Commission, now reflected in Appendix A of the ToR, and explained the main articles of the ToR concerning the Commission membership, including expertise, diversity, term mandates, and active engagement. She highlighted the need for the Commission's membership to evolve in order to reflect all these elements, detailing the ways the new [Rules](#) had been elaborated to facilitate this.

National Committees will be invited to appoint new members following the appointment process that will be communicated shortly, and will also be called on to confirm/renew current members according to the [Transitional Provisions](#).

3. Alexander G. Fessas, Secretary General of the ICC International Court of Arbitration and Director of ICC Dispute Resolution Services

Mr Fessas expanded on the preliminary statistics [available here](#) and confirmed those findings, indicating that the complete statistics report would soon become available.

He outlined the staff changes at the Secretariat since the Commission had last met in November, including the promotion of Francesca Hill to Head of Operations for DRS and the arrival of Iolanda Ghica as Head of Marketing & Promotion. Some upcoming departures were also announced, with Friederike Schaefer, Counsel of the German-speaking Team, returning to private practice, and Mirèze Philippe who would be retiring after four decades with ICC.

Mr Fessas then turned over the floor to Ms Ana Serra e Moura to give an update on the ICC DRS Digital Platform. She explained that many advances have been made with a first online tool for arbitrators, parties and their counsel expected to go live within a couple of months while an expanded platform is being developed in parallel.

4. Claudia Salomon, President of the ICC International Court of Arbitration “The ICC Court and Maslow’s Hammer”

Ms Salomon spoke about the cognitive bias known as ‘Maslow’s Hammer’. She explained how that bias operates to draw international arbitration practitioners to an over-reliance on familiar tools, asserting that *‘If all you have is a hammer, everything looks like a nail’*. Her complete speech, also given at the occasion of Tel Aviv Arbitration Week, is available [here](#).

5. New Task Force on Disability Inclusion in International Arbitration

Simon Maynard and Todd Weiler, Co-Chairs of the Task Force, recounted their own personal experiences with disability, the third Co-Chair Katherine Ramo having been unable to join them due to illness. They outlined some of the different types of disabilities, both physical and neurological, permanent and temporary, and provided some statistics, explaining the importance of the creation of the Task Force.

The just over 50 Task Force members had already met once for the first of six scheduled meetings over the next year. Their mission is to examine the procedural and other modifications that can potentially be made to make current arbitration processes more accessible for practitioners and users living with disability, with the end goal being to produce a report of recommended steps and suggested standardised language that can be used in arbitration proceedings

Albert Jan van den Berg recounted his personal story of a very serious cycling accident and how that experience piqued his interest in the disability movement. As Awareness Ambassador for the Task Force along with Yas Banifatemi, their task will be to raise awareness of disability matters in arbitration through a series of interventions at conferences and webinars, to speak with practitioners and to collect anecdotes in order to encourage general understanding and bolster the work of the Task Force.

6. Task Force on “ADR and Arbitration”

Chiann Bao, now joined by Christopher Newmark as Co-Chair, gave a status update on the work of the Task Force since the Commission last met on 23 November 2021. The Task Force will be meeting on 19 April to discuss the current draft report, which will then be further revised and circulated to the Commission and NCs for discussion at a special dedicated Commission meeting on 31 May. A final

draft will then be prepared and submitted to the Commission for approval at the end of October of this year.

Mr Newmark explained that the work of the Task Force had brought to light a conundrum in that, notwithstanding the interest of users and the availability of ADR services, these latter remain significantly underutilised. Using the example of a commercial contracts dispute, he illustrated how it only takes one small obstacle to arise for the path to mediation, for example, to become blocked. The report would therefore endeavour to include recommendations specifically for parties for counsel for arbitrators, as well as for the ICC itself, thereby improving the dispute resolution process for businesses of all shapes and sizes.

7. Task Force “Addressing Issues of Corruption in International Arbitration”

[Keynote Address: Recent developments in French case law on corruption and arbitration](#)

Pierre Mayer, Emeritus Professor, University of Paris 1 (Panthéon-Sorbonne) and Independent Arbitrator, delivered a keynote speech addressing recent developments in French case law on corruption in international arbitration. Unpacking and contextualising a recent decision of the Cour de Cassation, he interpreted for the Commission the current practice and evolution of jurisprudence of French courts. Professor Mayer’s keynote speech will feature in the upcoming volume of the ICC DRS Bulletin.

[Presentation of the work of the Task Force](#)

José Feris and Sophie Nappert reported on the work of the Task Force (“TF”) since their last status update in November, inviting the Coordinators of Tracks 5 and 3 to present their respective topics.

Track 5 - National Questionnaire

Diana Bayzakova, Payel Chatterjee, Ana Gerdau de Borja and Christine Lécuyer-Thieffry revealed a number of trends identified through their analysis of the input received from over 80 jurisdictions around the world. Live polling of the meeting participants confirmed several preliminary findings regarding established the state of the art in multiple jurisdictions regarding raising issues *sua sponte*, staying proceedings the duty to report, and other reported trends.

Track 3 - Indicators

Lucinda Low and Abdulhay Sayed gave a summary of the working document this Track had produced on the topic of red flags and other indicators of corruption. This document endeavours to address a number of questions, starting with the identification of what constitutes a red flag.

10. Any other business, next meeting date and concluding remarks

The next Commission Meeting will be dedicated to the first reading of the report from the Task Force on “ADR and Arbitration” and will take place virtually on Tuesday 31 May 2022.

The Commission will then meet again in person in Miami on Saturday 29 October 2022, on the eve of the IBA.