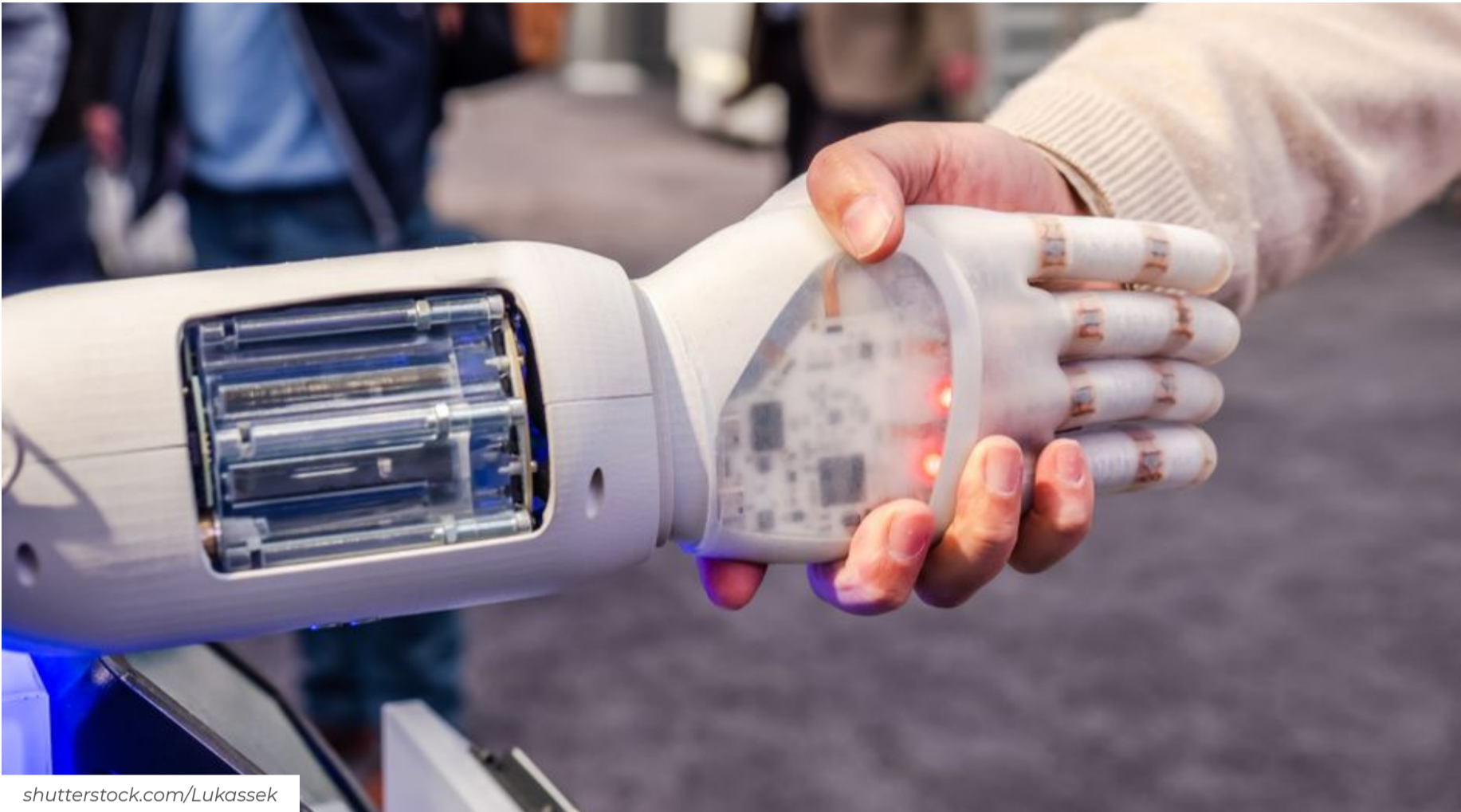


# The march of the "cobots"

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Online hearings and video conferences have become the “new normal” in international arbitration since the pandemic started - but are we ready for robot arbitrators and predictive analytics? The Milan Chamber of Arbitration looked at how developments in artificial intelligence are impacting international arbitration and the potential for collaborative use of "cobots".

Led by the chamber's director general **Stefano Azzali**, the online event featured a distinguished panels of speakers chaired by **Maxi Scherer** of WilmerHale.

The first panel saw **Niuscha Bassiri** of Hanotiau & van den Berg in The Hague, **Toby Landau QC** of Essex Court Chambers in London and Singapore and **Loretta Malintoppi** of 39 Essex Chambers in Singapore discuss the present use of technology and AI in international arbitration. The second panel featured **Ji En Lee** of Ascendant Lee in Singapore, **Anne Marie Whitesell** of Georgetown Law School and **Mohamed Abdel Wahab** of Zulficar Partners in Cairo, who considered the future use of AI in IA.

Whether in a Google search, a medical diagnosis or in landing an aircraft, AI and machine learning increasingly play a part in our everyday lives, the first set of panellists agreed. The outbreak of the pandemic has accelerated the pace at which AI is marching its way into legal practice and it is only a matter of time until it will irreversibly shape the legal profession.

Thanks to covid-19, AI is now assisting the practice of international arbitration in almost all its phases. Whether lawyers are running conflict checks, scheduling meetings, selecting arbitrators or doing legal research, AI is involved.

However, as Bassiri underlined, there are gaps in the use of AI. Whereas counsel make good use of it during the file management stage, the same cannot be said for arbitrators when it comes to the drafting of the award.

Nor is predictive coding being used to forecast outcomes as it has been in US court cases - for example, the 2016 case of *Loomis v Wisconsin*, where a machine was asked to determine the defendant's criminal sentencing (the Wisconsin Supreme Court later confirmed this was not a breach of the defendant's due process rights).

### **1st generation versus 2nd generation AI**

According to Landau, the arbitration community has some "resistance" towards extensive use of AI, perhaps owing to the confidential nature of commercial arbitration and the lack of data on case outcomes. It is used more in investor-state arbitration, which by nature is more transparent, he said.

While outcome-prediction technology may be easily used in litigation with straightforward outcomes, its use in arbitration is far more complicated, Landau argued. The numerous factors that come into play in the tribunal deliberation room, such as arbitrators' different cultures and experience, give rise to chaotic decisional phases which AI cannot replicate.

However, first generation, non-predictive AI, which is widely in use today, can be applied effectively to the document production phase of arbitration and to the selection of arbitrators, Landau suggested. AI allows for relevant documents to be expeditiously identified and managed through algorithms, rather than human review; it also allows for arbitrators to be selected through search engines. In both cases, the output is based on search terms or input rules created by humans.

Second-generation AI differs from first-generation AI in that it rests on statistical inference, whereby humans feed machines with data and rules which will allow them to judge new input data autonomously. Not only could second generation AI improve and speed up the arbitral procedure, but its use to select arbitrators could increase diversity in international arbitration, argued Malintoppi. Most users today rely on word-of-mouth feedback to choose tribunal members, she noted. AI could level the playing field by making empirical rather than subjective selections.

### **The need to adapt**

As AI continues to advance, the work done by lawyers will become more vulnerable to automation, the second panel recognised. It is essential that arbitration proceedings and practitioners adapt if this method of dispute

resolution is to survive.

One thing Lee was sure of was that the next generation of lawyers will have to be equipped with a combination of legal and IT high-level skills to stand out in the digital environment. In his view, outcome-prediction technology is not to be feared and would allow claimants to make informed decisions on whether they should take their case further. AI could be used to prevent disputes from even reaching the trial phase, he noted.

Whitesell considered the limitations and downsides of AI. There are both practical and ethical reasons why AI and technology will not, and should not, replace in-person-arbitration, she said. In particular, she highlighted the problem of robots replacing human decision-makers and replicating past decisions without taking into account subtle differences and nuances.

The confidentiality surrounding commercial arbitration means known past decisions may not be fully representative, she emphasised.

The different architectural intelligence between humans and machines also cannot be ignored, Whitesell said. Whereas machines work with probabilities, humans use logic. If robots were to replace humans as decision-makers, their inability to explain to the losing party how the decision was reached could throw the system into crisis.

Finally, Whitesell stressed how regulating the use of AI internationally and creating global standards should be a top priority to avoid its hidden dangers.

#### **Enter the cobots?**

Whether we like it or not, the transformative role of AI is a reality, said Abdel Wahab. However, he thought AI and IA will have a harmonious future, in which arbitrators will be assisted by collaborative robots or "cobots", which offer a balance between human input and automation.

Cobots are already in operation in Singapore, he said.

Another hybrid form of AI Abdel Wahab thought that we might see in the future is the implanting of brain chips in people (including arbitrators) to improve the human mind.

As AI becomes more intelligent, arbitration as we know today will likely cease to exist, he said.

Panellists agreed that the biggest problem with AI today is its undisciplined nature and the expense and complexity of using it. Whereas automation can help with lower-level tasks, the arbitration community has to decide how much trust it wants to place in AI and the extent to which it should replace human involvement in cases.

As Azzali concluded, we must learn to ride the technology wave and not get swept away. The need for efficiency in international arbitration means AI's potential cannot be ignored - but nor can we turn a blind eye to the standards of transparency and accountability required by AI systems.

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