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# See You in The Metaverse, Mr Arbitrator



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**A**lmost a year ago, our colleagues Álvaro López de Argumedo and Marta González-Ruando Calles wrote about remote hearings in international arbitration.<sup>1</sup>

International arbitration has now taken a step further thanks to the metaverse, a technology that allows hearings to be held in virtual reality. The metaverse could become the instrument that allows international arbitration to function autonomously, as authors such as Rubellin-Devichi<sup>2</sup> and Julian Lew<sup>3</sup> have advocated.

Virtual-reality hearings in the metaverse are not science fiction, they are closer than what

<sup>1</sup> A. López Argumedo and M. González-Ruando Calles, 'Remote Hearings in International Arbitration during the Pandemic' (2022), *Uría Menéndez Investment Arbitration Outlook*, p. 19.

<sup>2</sup> J. Rubellin-Devichi, 'L'arbitrage: Nature Juridique: Droit Interne et Droit International Privé', (1965) *Librairie Generale de Droit et de Jurisprudence*.

<sup>3</sup> J. Lew, 'Applicable Law in International Commercial Arbitration: a study in commercial arbitration awards' (1978).

we may think: just last year, the University of Ottawa held its first moot trials (a mock trial where students take part in simulated legal proceedings) in the metaverse.<sup>4</sup>

## What is the metaverse?

The metaverse is an artificial reality in which users can interact with an artificially generated environment and other users, usually through an avatar associated to the user's virtual identity that represents them in the metaverse. This digital space combines various elements, including virtual reality, augmented reality, social media, cryptocurrencies and online gaming, to together form what we refer to as the metaverse.

<sup>4</sup> P. Logothesis, 'uOttawa's Faculty of Law takes moot trials to the metaverse' (17 March 2022) <<https://www2.uottawa.ca/about-us/media/newsroom/uottawas-faculty-law-takes-moot-trials-metaverse>> accessed 15 September 2022.

The following excerpt included in a report by the Pew Research Center and Elon University's Imagining the Internet Center titled "The Future of the Metaverse" best describes experts' current understanding of the metaverse:

Interest in the idea of the metaverse leaped in 2021-2022, prompted in part by Facebook's decision to rebrand itself as "Meta." The word was coined by sci-fi author Neal Stephenson in 1992 in his novel "Snow Crash." In today's terms, the metaverse is the realm of computer-generated, networked extended reality, or XR, an acronym that embraces all aspects of augmented reality, mixed reality and virtual reality (AR, MR and VR). At this point in time, the metaverse is generally made up of somewhat-immersive XR spaces in which interactions take place among humans and automated entities. Some are daily interactions with augmented-reality apps that people have on their computers and phones. Some are interactions taking place in more-immersive domains in gaming or fantasy worlds. Some occur in "mirror worlds" that duplicate real-life environments.

While extended-reality gaming and social spaces have been in existence for decades, early 2020s technological advances and societal transformations brought about by the COVID-19 pandemic have pushed the development of the metaverse to the forefront, inspiring tens of billions of dollars in new investments

## The metaverse is a digital space resulting from the combination of various elements, including virtual reality, augmented reality, social media, cryptocurrencies and online gaming

and prompting predictions that the metaverse is "the future of the internet" or "the next internet battleground."<sup>5</sup>

The metaverse would therefore, in a manner similar to remote hearings, allow hearings to be held wherever the participants are physically located (whether that be the arbitrators, lawyers, parties or witnesses). However, the advantage of the metaverse over videoconferencing platforms such as Zoom or Microsoft Teams is that the parties involved in the arbitration are fully immersed in the hearing, thanks to the computer-generated artificial reality and the virtual-reality goggles and gloves they use. In international arbitration, hearings would take place in "mirror worlds", which are artificial spaces generated in such a way as to imitate the real world in a virtual environment. Professor and arbitrator Anthony Daimsis described his completely immersive

<sup>5</sup> Pew Research Center and Elon University's Imagining the Internet Center, 'The Future of the Metaverse' (30 June 2022) <<https://www.elon.edu/u/imagining/surveys/xiv-2022/future-of-metaverse-web3-2040/>> accessed 18 September 2022.

sensory experience during the University of Ottawa moot trials as follows:

The technology used plays with our senses beyond our audible and visual ones. The technology allows users to "feel" someone handing over a document or exhibit. With this "haptic" (relating to touch) technology, even the judges in our moot got to pick up a virtual gavel and strike a virtual sound block [...]. Unlike Zoom, virtual reality takes account of a room's acoustics. [...] In a virtual room, the closer you are to a person, the louder you hear their voice. It's pretty remarkable to experience. The most significant difference between virtual reality and Zoom is that when you're sitting in a virtual reality hearing room, you actually feel like you are in a hearing room. What's more, the people you're interacting with are in the same room as you.<sup>6</sup>

### A brief description of the theory of autonomous arbitration

As mentioned at the beginning, the metaverse could allow international arbitration to function autonomously, without it being subject to the powers of a State or contract. While the jurisdictional theory of arbitration argues that States have complete supervisory powers to govern international arbitration and contractual theory holds that

<sup>6</sup> B. Leon and A. Daimsis, 'Arbitration in the metaverse: Not quite ready for prime time' in the *Lawyer's Daily* <<https://www.thelawyersdaily.ca/articles/37691/arbitration-in-the-metaverse-not-quite-ready-for-prime-time?category=analysis>> accessed 18 September 2022.

international arbitration arises from an agreement between the parties and is therefore subject to the will of the parties, the autonomous theory of arbitration departs from these traditional views and argues that arbitration is – and should function as – an autonomous institution free from limitations or state interference arising from the place of arbitration.<sup>7</sup> According to RubellinDevichi, the true nature of international arbitration must be decided based on its use and purpose, by placing arbitration on a supranational level and acknowledging its autonomy.<sup>8</sup>

Up until now, however, a party whose claims the arbitral tribunal upheld and who wishes to have an award enforced has to resort to national courts to do so, thus bringing the national law of the State in question into play. Ultimately, the idea of completely autonomous international arbitration acting as a supra-national institution seems a utopian idea, since, at the end of the day, international arbitration requires the interplay of States and their national laws.

<sup>7</sup> E. Gaillard, *Legal Theory of International Arbitration* (Martinus Nijhoff Publishers, 2010), pp 35-66.

<sup>8</sup> H. Yu, 'A Theoretical Overview of the Foundations of International Commercial Arbitration' 1(2) *Contemp. Asia Arb. J.* 255 (United Kingdom, 2008).

**"Mirror worlds" are artificial spaces generated in such a way as to imitate the real world in a virtual environment**

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## The metaverse: the solution for making international arbitration truly autonomous?

As we mentioned earlier, one of the main advantages of the metaverse compared to videoconferencing platforms is that it enables the complete – even sensorial – immersion of the participants in an arbitration, even when they are in entirely separate locations. The metaverse, in combination with blockchain technologies, may be the answer to arbitration's longed-for autonomy.

As a decentralised technology, blockchain operates autonomously without being controlled by any institution or government. This autonomy is what international arbitration can take advantage of to end its dependence on States. The best example of the potential utility of blockchain technology to international arbitration is smart contracts, which are self-executing. Smart contracts are agreements that are written as a software program through lines of code. This code is written in the blockchain network and is therefore distributed and decentralised, so that it cannot be altered. Since the agreement is written as a software program, the instructions are self-executing and the resulting transactions are trackable and irreversible. This type of contracts therefore do not need a central executing authority or legal system to be enforced.

Arbitral awards can also be written in code, as if they were a smart contract, so that they are self-executing. So when an

arbitral tribunal makes its decision, the award would be written as though it were a computer program, in code, instead of being written on paper. Therefore, if the code says that the money should be sent to the winning party, it will be sent to that party. This way, the losing party automatically enforces the arbitral award, without the need for the winning party to go to court to enforce it. In other words, the award will be executed autonomously without needing to resort to the executive powers of a State. To achieve this, the "smart award" can be linked to an escrow, where the parties have deposited the amount in dispute, so that the money is automatically allocated to the winning party when the award is handed down.

That said, for the moment the option of having self-executing awards is still limited to situations where the dispute revolves around monetary amounts or digitised intangible assets, such as NFTs, as they can be represented on the blockchain network. Platforms such as Jur and Kleros already offer arbitration services based on blockchain technology.<sup>9</sup>

Another point to bear in mind is that this type of arbitral awards cannot, for now, be annulled within the meaning of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. The blockchain technology used to create these self-executing arbitral awards does not allow the code

<sup>9</sup> Jur: <<https://jur.io/>>; Kleros: <<https://kleros.io/>>.

## Participants in an arbitration are completely immersed in the hearings, including sensorially

to be modified once it has been entered into the blockchain. This technology's immutability is precisely what leads many users to use it. However, in current practice, when a transaction has been executed incorrectly, a new transaction is re-entered into the chain, so that both are visible. This could be the solution in cases where an arbitral award is annulled.

### Conclusion

Notwithstanding the possibilities that the metaverse opens up for dispute resolution and the opportunity it offers international arbitration to function autonomously from national legal systems, the metaverse is still at a very early stage in its development. Following his experience at the University of Ottawa's moot trials, Professor Daimsis maintained that "[t]he technology is still in its infancy but works quite well".

In short, the metaverse may not yet be at an optimal point for widespread use in the holding of hearings, but what seems certain is that just as the first remote hearings have become a reality, so will the first hearings held in digital realities. So... see you in the metaverse, Mr Arbitrator.

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