

COMBAR: North American Meeting, Vienna 2018

On Wednesday 30 May 2018 approximately 80 Combar members and lawyers from the UK, Canada and the US arrived in Vienna for COMBAR's annual North American Meeting.

Guests and their families attended a welcome cocktail reception on Wednesday 30 May 2018 at the Grand Foyer, Park Hyatt.

This was followed by another cocktail reception on Thursday 31 May 2018 at the Palais Coburg, a beautiful palace with impressive views over Vienna's Stadt Park.

The highlight was a black-tie dinner on Friday 1 June 2018 at the opulent Lichtenstein City Palace. A sumptuous four-course dinner was followed by an elegant presentation of the Viennese waltz. The Lichtenstein City Palace belongs to the prince of Lichtenstein and is built in an ornate baroque style, with stucco ceilings, marble statues and mirrored walls. Most impressive were the sparkling chandeliers which could have featured in a production of Andrew Lloyd Webber's *The Phantom of the Opera*.

The conference was held at the impressive Grand Salon of the Park Hyatt, which used to be a former bank. The Grand Saloon was decorated with an elaborate panelled ceiling and ornate tapestry. This was a truly beautiful setting for the conference.

The conference started with a discussion entitled "What is the point? Challenges in commercial litigation" chaired by Mr Justice Popplewell, Judge in Charge of the Commercial Court. Mr Justice Popplewell provided helpful advice for advocates: notably to reduce the length of skeleton arguments by half. This followed discussion about the use of witness statements and expert reports in commercial litigation. There was lively discussion in relation to the UK and American approach to instructing experts: in the UK it was deemed acceptable, if not necessary, for the barrister to liaise closely with the expert regarding their report, whilst respecting the expert's independent opinion, whereas in the US this was deemed to be an unacceptable trespass upon the expert's independence. We also heard about the significant cost of disclosure in the North America.

The next session concerned "Arbitration". We heard that in the US parties often seek to arbitrate in order to avoid being drawn into class litigation. We learnt the challenges and solutions facing international arbitration panels, and how arbitrators work closely with local courts in order to compel witness attendance or the disclosure of evidence. We heard about the need to avoid arbitral bias, especially in relation to parties repeatedly appointing the same arbitrators, and the need to preserve a party's freedom to appoint the arbitrator they wish. The tension between respecting the arbitrator's personal data under the GDPR and ensuring adequate disclosure about their personal circumstances to avoid bias was discussed. We also heard about the enforcement of arbitral awards and the judicial review of arbitral awards.

The afternoon session was entitled "Recent developments in banking disputes". There was discussion regarding the complexity of structured finance litigation, the court's finding that the arranging bank owed a duty of care to first and secondary investors in the *Golden Belt* case, and 7 years of LIBOR litigation.

The next session concerned “ Damages”. We heard about the importance of the trial by jury in American civil cases, and how excessively generous jury awards had been capped by statute. We also learnt about the assessment of damages for breach of a non-competition clauses, was this to be based on a hypothetical contract or account of profits? Finally, we heard about an interesting American patent infringement case with extraterritorial aspects.

On Friday 1 June 2018, there was a debate regarding the motion “This House would outlaw litigation funding” which was expertly chaired by Mr Justice Popplewell. We heard persuasive reasons both for outlawing litigation funding, including the lack of regulation and the introduction of financially-motivated third-parties to the litigation, and against, including the need to promote access to justice. The discussion was intelligent but entertaining, with even suggestions that perhaps all litigation could be resolved by a French swimming pool expert! In the end, the proposers of the motion won, but narrowly.

I am most grateful to COMBAR and the Bar Council for providing me with a grant to attend the Vienna Combar conference. It was a most worthwhile experience: educational and enjoyable!