

ITA-CBAR Joint Conference on International Arbitration
Renaissance São Paulo Hotel | São Paulo, Brazil
September 21-23, 2008

September 21, 2008
Young Lawyers International Arbitration Roundtable
Presented by

BRAZILIAN ARBITRATION COMMITTEE
INSTITUTE FOR TRANSNATIONAL ARBITRATION
ICC YOUNG ARBITRATORS FORUM
ICDR YOUNG & INTERNATIONAL
LCIA YOUNG INTERNATIONAL ARBITRATION GROUP

The Young Lawyers Roundtable is for lawyers under 40 who practice or have an interest in practicing in the field of international arbitration. Designed to maximize discussion among all participants, the Roundtable will be a moderated open discussion among panelists and registrants on matters of interest, an exchange of experience and perspective among practitioners from different backgrounds and regions. Participants are encouraged to submit questions and topics for discussion in advance as well as during the Roundtable. Simultaneous translation will be available in Portuguese, English and Spanish.

Topics likely to be addressed include:

- Arbitration Clause: what are the main dos and don'ts when drafting arbitration clauses?
- Multiplicity of parties, joinder and intervention of third parties: what are the requirements for an arbitrator to hold an arbitration clause binding on a non signatory party?
- The choice of arbitrators: what are the most common problems with arbitrators? What is the role of the arbitration institution in dealing with these issues?
- Expert witnesses: what are the advantages and disadvantages of having an expert witness?
- Awards: can arbitrators render a partial award even when the arbitration clause and chamber's rules are silent?
- Damages: what are the key differences between crystallized and non-crystallized losses?

To submit your questions or topics in advance for discussion at the Roundtable, please [click here](#).

3:00 pm	Registration	
3:30 pm	Welcome	<p>Eleonora Pitombo, Castro, Barros, Sobral, Gomes, São Paulo Representative, Brazilian Arbitration Committee</p> <p>Aníbal Sabater, Fulbright & Jaworski L.L.P., Houston Chair, ITA Young Arbitrators Initiative</p> <p>Luiz Claudio Aboim, Freshfields Bruckhaus Deringer LLP, Paris Representative, LCIA Young International Arbitration Group</p> <p>Luis M. Martinez, Vice President, ICDR, New York Representative, ICDR Young & International</p> <p>Katherine González Arrocha, ICC International Court of Arbitration, Paris Representative, ICC Young Arbitrators Forum</p>
3:45 pm	First Session Co-Moderators: Panelists:	<p>Eleonora Pitombo, Castro, Barros, Sobral, Gomes, São Paulo, Brazil</p> <p>Aníbal Sabater, Fulbright & Jaworski L.L.P., Houston, TX, USA</p> <p>Daniela Branco dos Santos Capuano, TozziniFreire Advogados, São Paulo, Brazil</p> <p>Flávia Bittar Neves, Grebler Advogados, Belo Horizonte, Brazil</p> <p>Renato Stephan Grion, Pinheiro Neto Advogados, São Paulo, Brazil</p>
5:00 pm	Break	
5:15 pm	Second Session Co-Moderators:	<p>Luiz Claudio Aboim, Freshfields Bruckhaus Deringer LLP, Paris, France</p> <p>Nicole Dolenz-Extale, Baker & McKenzie, New York, NY, USA</p>

	Panelists: Filipe Alfaiate , Clifford Chance, London, United Kingdom Julián Treviño , Borda y Quintana, S.C., Mexico City, Mexico, USA Alex Wilbraham , Freshfields Bruckhaus Deringer LLP, Paris, France
6:30 - 8:00 pm	ITA-CBAr Joint Conference Reception Renaissance São Paulo Hotel – Havana Club
September 22, 2008 4th Annual ITA Americas Workshop: <i>Insider Insights in Complex Energy Disputes</i>	
8:00 a.m.	Registration
9:00 a.m.	Introduction to the Workshop Prof. David D. Caron, ITA Chair
9:10 a.m.	Introduction to Act I Workshop Co-Chair Carole Malinvaud
ACT I – Managing the Outset of a Complex, Politically Sensitive Dispute: Strategic Decisions	
9:20 a.m.	ACT I – SCENE I – Board Decisions The head of the Gasolonian project has sent a warning to Petrol’s general counsel and asked for guidance as to how the dispute should be handled. After digging into the particulars of the project, Petrol’s general counsel has called for an extraordinary board meeting. Issues discussed include: opportunity to act against local contractor (applicable dispute resolution clause, timing and potential impact on ongoing works); involvement of JV partners (possibility to have them join voluntarily as claimants); opportunity (financial and strategic) to act against Gasolonian government; and overall assessment of costs involved and human resources needed; prioritizing ongoing litigations. General Counsel for Petrol Jennifer Hardin Members of Petrol’s Board João Bosco Lee Diana Droulers
9:40 a.m.	Commentary and Discussion: Board Decisions on Legal Matters – Different in House Perspectives
9:55 a.m.	Act I – Scene II – Selection of Counsel Petrol traditionally works with a firm with offices close to its headquarters in the Federal Republic of Apollonia, which helped setting up the company 50 years ago and has ever since assisted it in all Apollonian litigations and mergers and acquisitions. <i>Issue</i> : whether to retain a counsel who knows the company but has never done arbitration or an outside counsel specializing in arbitration (construction and/or energy) with the assistance of in-house counsel. The decision is taken to resort to a counsel specialized in arbitration and to organize a beauty contest among three firms on the basis of lawyers’ profiles and approaches to complex files, the firms’ reputations, and the estimate of fees. General Counsel for Petrol Jennifer Hardin Members of Petrol’s Board Luis Alberto Erize Jonathan C. Hamilton Lawyer with US background Dietmar W. Prager Lawyer with English background Felipe Ossa Lawyer with Civil Law background Eduardo D. Gonçalves
10:20 a.m.	Commentary and Discussion: Selection of Counsel – What Really Matters
10:35 a.m.	BREAK
10:50 a.m.	Introduction to Act II Workshop Co-Chair Carole Malinvaud
ACT II – Commencement of Proceedings	
10:55 a.m.	Act II – Scene I – Amicable Settlement Negotiations Gasolonia Construction has notified Petrol of its intention to resort to a Dispute Resolution Board (DRB) under their contract’s dispute resolution clause. Petrol’s counsel reminds his client that the dispute resolution clause provides for a preliminary to any submission to a DRB, namely amicable settlement negotiations. He discusses the wording of the clause and the conditions in which it was negotiated with

	<p>his clients in order to determine whether failure to comply therewith renders any submission to a DRB inadmissible. They further discuss the conditions under which such discussions should take place: Attendants? Without prejudice character of such discussions? Need and opportunity to sign a confidentiality undertaking? Take the initiative of reminding Gasolonia Construction of this first mandatory step or remain silent and later stall the proceedings by raising a plea of inadmissibility?</p> <p>General Counsel for Petrol Eduardo Silva Romero Member of Petrol's Board Adriana Braghetta Counsel for Petrol Nigel Blackaby Anne Véronique Schlaepfer Rodrigo Fonseca</p>
11:20 a.m.	Commentary and Discussion: Settlement Negotiations – Efficiency and Prudence
11:35 a.m.	<p>Act II – Scene II – The Dispute Resolution Boards</p> <p>Petrol and its outside counsel meet with an ICC representative to learn about Dispute Resolution Boards administered by the ICC. In particular, Petrol is interested in understanding the differences among traditional dispute boards, dispute adjudication boards and combined boards, and the practical effect of their decisions.</p> <p>Petrol also wishes to gain insight on how a dispute board proceeding unfolds. In its discussions with its counsel and the ICC representative, Petrol leads the conversation towards the expectations it should have of the overall process, especially in light of the fact that the Board is comprised of both lawyers and non-lawyers.</p> <p>Counsel for Petrol Jennifer Smith Commercial Client Giovanni Ettore Nanni ICC Counsel Katherine González Arrocha</p>
11:55 a.m.	Commentary and Discussion: Choosing the Appropriate Dispute Resolution Board and the Effect of That Decision on Subsequent Arbitration Proceedings
12:10 p.m.	Questions and Answers
12:15 – 1:45 p.m.	<p>Hosted Luncheon</p> <p style="text-align: center;">Hon. Sidney Benetti Superior Court of Justice (STJ) of Brazil Brasília, Brazil</p>
1:45 p.m.	Introduction to Act III Workshop Co-Chair C. Mark Baker
ACT III – Hearings before the Arbitral Tribunal	
1:55 p.m.	<p>Act III – Scene I – Impact of Local Proceedings</p> <p>Gasolonia Construction has filed a claim before local courts, requesting that they order Petrol to release the sums it had withheld under the lump-sum contract, together with applicable interest, on the basis of the Dispute Resolution Board’s findings. Petrol requests the tribunal to order Gasolonia Construction to withdraw its claim before the local courts (which according to Petrol breaches the arbitration agreement), arguing that the Board lacked authority to issue a binding recommendation, and alternatively that any enforcement of a dispute board resolution should take place in arbitration and not in the local courts. Gasolonia Construction counters that domestic courts enjoy the power under Gasolonian law to enforce binding adjudications from alternative dispute resolution bodies, even where the sums are being disputed. Thus, the tribunal should allow the Gasolonian legal process to take its course.</p> <p>The Arbitral Tribunal considers whether to issue an order or award, and to what extent each would be enforceable.</p> <p>Counsel for Petrol Christian Camboulive Counsel for Gasolonia Construction Kevin O’Gorman Local Counsel for Gasolonia Construction João Afonso de Assis Arbitral Tribunal: Chairman Teresa Giovannini Party appointed Arbitrator Pedro Batista Martins Party appointed Arbitrator Donald Francis Donovan</p>

2:20 p.m.	Commentary and Discussion: Impact of Local Proceedings
2:35 p.m.	<p>Act III – Scene II – Insight into the Arbitral Tribunal’s Deliberations</p> <p>The arbitrators begin their deliberations by wondering why Petrol has not initiated proceedings against the Gasolonian government for providing it with erroneous data. The arbitrators also consider whether the transmittal of erroneous data could constitute hardship or unforeseeable circumstances under the contract. The tribunal also notes that a significant number of documents are incomplete or missing from the files the parties have submitted. The arbitrators consider whether they should request production of the missing documents or decide the matter based on the documents actually disclosed by the parties.</p> <p>In the course of deliberations, it appears to the arbitrators that counsel for Petrol has missed a major legal argument: In light of due process requirements, on the one hand, and the tribunal’s desire to render a correct and just award, the arbitrators consider whether they should re-open the proceedings to invite the parties to address this issue and how to proceed, if they decide to re-open the case.</p> <p>Arbitral Tribunal: Chairman Teresa Giovannini Party appointed Arbitrator Pedro Martins Party appointed Arbitrator Donald Francis Donovan</p>
3:00 p.m.	Commentary and Discussion: Insight into the Arbitral Tribunal’s Deliberations
3:15 p.m.	BREAK
3:30 p.m.	Introduction to Act IVWorkshop Co-Chair José Emilio Nunes Pinto
ACT IV – Institutional Issues	
3:35 p.m.	<p>Act IV – Scene I – Consolidation of Parallel Proceedings (<i>Fuel and Oil v. Petrol and Petrol v. Gasolonia Construction</i>)</p> <p>In the meantime, the Gasolonian government has applied for huge liquidated damages under the PSA, which risk jeopardizing the profitability of the project for all JV partners. Fuel and Oil blame this situation on Petrol’s negligence in handling its subcontractor. Therefore, they have initiated a parallel arbitration against Petrol under the ICDR’s International Arbitration Rules and, pursuant to Article 37, have requested the appointment of an emergency arbitrator to prevent Petrol from dissipating its assets. Eager to ensure that Fuel and Oil bear their portion of any lump sum awarded to Gasolonia Construction in the first arbitration, Petrol favors consolidation of the two arbitration proceedings. When the other parties reject its proposal, Petrol files a request for consolidation with the ICDR, which through its solutions manager must address the Article 37 request and the request for consolidation.</p> <p>Counsel for Fuel and Oil Cristian Conejero Counsel for Petrol Eduardo Ferrero Counsel for Gasolonia Construction Gilberto Giusti ICDR Administrator Luis Martinez</p>
3:55 p.m.	Commentary and Discussion: Consolidation of Parallel Proceedings
4:10 p.m.	<p>Act IV – Scene II – Challenge of Arbitrators (<i>Petrol v. Gasolonia Construction</i>)</p> <p>On the eve of the arbitrators’ meeting to discuss a draft of their final award, Gasolonia Construction has moved to challenge the entire tribunal, complaining about the length of the proceedings, questioning the impartiality of one tribunal member (recently appointed Secretary of State for Gasolonia’s archenemy) and the ability of another member to serve for health reasons. Petrol denies that the proceedings have lasted unusually long and claims that Gasolonia Construction’s “groundless” challenge reflects its fear of an adverse outcome. The ICDR administrator sets up a conference with counsel of both parties to hear arguments for and against the challenge of each arbitrator. After the conference with the parties, the ICDR administrator meets with all three arbitrators as they have just started their deliberations in a hearing room at the ICDR’s offices. While one tribunal member (appointed by Gasolonia Construction) offers to resign, the others decline.</p> <p>Counsel for Gasolonia Marcelo Roberto Ferro Counsel for Petrol Marcelo Muriel Arbitral Tribunal: Chairman Sally Harpole Party appointed Arbitrator John Lorn McDougall Party appointed Arbitrator Eduardo Zuleta</p>

	ICDR Administrator Luis Martinez
4:35 p.m.	Commentary and Discussion: Challenge of Arbitrators
4:50 p.m.	Questions and Answers
5:15 p.m.	Closing Remarks Prof. David D. Caron, ITA Chair
5:30 - 7:00 pm	ITA-CBAr Joint Conference Reception Renaissance São Paulo Hotel – Havana Club
September 23, 2008 VIII Brazilian Arbitration Congress Arbitrability: The Last Frontier to the Universalism of Arbitration	
8:00 a.m. – 9:00 a.m.	Registration
9:00 a.m. – 9:15 a.m.	Conference Opening by Eduardo Damião Gonçalves , President of Brazilian Arbitration Committee – CBAr; Barretto Ferreira, Kujawski, Brancher e Gonçalves Sociedade de Advogados, São Paulo, Brazil
9:15 a.m. – 10:00 a.m.	Moderator - Luiz Olavo Baptista , L.O. Baptista Advogados Associados, São Paulo, Brazil 9:15 - Arbitrability and Jurisdiction - Philippe Leboulanger , Leboulanger & Associates, Paris, França 9:45 - Debater – Carlos Alberto Carmona , Marques Rosado, Toledo Cesar & Carmona Advogados, São Paulo, Brazil
10:00 a.m.	Comments by the Moderator
10:10 a.m. – 10:30 a.m.	COFFEE BREAK
PANEL I – Arbitrability’s Rules	
10:30 a.m. – 12:00 p.m.	Moderator – Pedro Batista Martins , Batista Martins Advogados, Rio de Janeiro, Brazil 10:30 – The definition rules of arbitrability and its application – João Bosco Lee , Castro, Valença, Lee e Araújo, Curitiba, Paraná, Brasil 10:50 – Arbitrability and public order – Homayoon Arfazadeh , Python & Peter, Geneva, Switzerland 11:10 – Arbitrability and mandatory law – Jean-Baptiste Racine , Professor of the University of Nice, Nice, France 11:30 – 12:00 – Comments by the Moderator and Debates
12:00 p.m. – 2:00 p.m.	LUNCH
PANEL II – Arbitrability’s Control	
2:00 p.m. – 3:40 p.m.	Moderator – José Carlos de Magalhães , Professor of the Law School of the University of São Paulo, Brazil 2:00 – The Law Governing the definition of arbitrability: the arbitrator’s point of view – Carole Malinvaud , Gide, Loyrette, Nouel, Paris, France 2:20 – The Law Governing the definition of arbitrability: the judge’s point of view – Howard S. Zelbo , Cleary Gottlieb Steen & Hamilton LLP, New York, USA 2:40 – Arbitrability on the International Conventions (or just on the NewYork’s) – Nigel Blackaby , Freshfields Bruckhaus Deringer LLP, Paris, France 3:00 – Comments by the Moderator and Debates
3:40 p.m. – 4:00 p.m.	COFFEE BREAK
PANEL III – Arbitrability’s Limits	

<p>4:00 p.m. – 5:30 p.m.</p>	<p>Moderator – Selma Lemes, Selma Lemes Advogados Associados, São Paulo, Brazil</p> <p>4:00 Arbitrability limited by the exclusive competence of the State: The example of the Anti-trust Law – Mathieu de Boisseson, Darrois Villey Maillot Brochier, Paris, France</p> <p>4:20 -Arbitrability and unconscionability (labor and consumer arbitration) – Jean Kalicki, Arnold & Porter LLP, Washington D.C., USA</p> <p>4:40 – Arbitrability limited by the exclusive competence of the State's jurisdiction: Bankruptcy Law – Donaldo Armelin, Desembargador aposentado do TJ/SP, Professor de Direito da PUC/SP</p> <p>5:00 – Comments by the moderator and Debates</p>
<p>5:30 p.m. – 6:15 p.m.</p>	<p>Conference Closing</p> <p>Moderator - Pedro Paulo Cristóforo, Motta, Fernandes Rocha Advogados, São Paulo, Brazil</p> <p>5:30 - Arbitrability on the International Commercial Arbitration or the interface between universalism and regionalism – Eduardo Silva Romero, Dechert LLP, Paris, France</p> <p>Closing by Eduardo Damião Gonçalves, President of the Brazilian Arbitration Committee and Adriana Braghetta, Vice President of the Brazilian Arbitration Committee, L.O. Baptista Advogados, São Paulo, Brazil</p>