

1ST ANNUAL ITA WINTER FORUM

San Francisco, California

February 3, 2012

WINTER FORUM CO-CHAIRS



Susan Franck is an Associate Professor of Law at Washington & Lee University School of Law where her teaching and scholarship relates to international economic law and dispute resolution. Professor Franck the author of various articles published in the *American Journal of International Law*, *Fordham Law Review*, *Minnesota Law Review*, *North Carolina Law Review*, *Washington University Law Review*, *Virginia Journal of International Law*, and *Harvard Journal of International Law*. Professor Franck has been elected to the International Who's Who of Commercial Arbitration and received the "New Voices" award from the American Society of International Law for her groundbreaking empirical analysis of investment treaty arbitration. She was also responsible for the Joint Symposium on International Investment and Alternative Dispute Resolution, a collaboration between Washington & Lee and the United Nations Conference on Trade and Development, which occurred through a collaboration blog, other online mediums and a traditional in-person conference. In addition to these scholarly efforts, Professor Franck has practical experience in arbitration on both sides of the Atlantic. She was previously an associate at Wilmer, Cutler & Pickering's (now Wilmer Hale) International Group in Washington, D.C. where she was involved with various proceedings, including international trade disputes, commercial litigation regarding defaulted sovereign debt and one of the first investment treaty arbitrations against the Czech Republic. She was also a senior associate in the International Arbitration Group at Allen & Overy in London, England, where she represented investors and sovereign states in arbitrations involving breaches of investment treaties and underlying commercial agreements. Professor Franck is qualified to practice law in England and Wales, Minnesota and the District of Columbia. She has been appointed to the Academic Council for the Institute for Transnational Arbitration, the American Association of Law School's Section on Alternative Dispute Resolution, the Steering Group of the American Bar Association's Committee on Commercial Dispute Resolution and the Chartered Institute of Arbitrators.



Leah D. Harhay is Of Counsel in the Global Disputes practice of Jones Day. She practices from San Francisco, advising and representing corporate and sovereign clients in investor-State arbitration. Before joining Jones Day, Ms. Harhay was in private practice working with international tribunals, experts, and law firms to provide legal analysis, damages calculation, and secretariat services in English, Spanish, and French. She served as Legal Secretariat in the NAFTA arbitrations *Glamis Gold, Ltd. v. United States of America* and *Cargill, Inc. v. United Mexican States*, and contributed to numerous expert opinions submitted in investor-State disputes in Africa, Asia, Europe, and the Americas. Previously, Ms. Harhay practiced with Latham & Watkins LLP in San Francisco and clerked for the United States Department of Justice, Environment and Natural Resources Division. Ms. Harhay is the Managing Editor of the *World Arbitration & Mediation Review*—the law journal of the Institute for Transnational Arbitration (ITA)—and sits on ITA's Executive Committee.

CHAIR, INSTITUTE FOR TRANSNATIONAL ARBITRATION



Lucy Reed, who currently serves as Chair of the ITA, co-heads the Freshfields global international arbitration group. She represents private and public clients and occasionally sits as arbitrator in international arbitrations under the major rules. Lucy is a member of the LCIA Court and the ICC Commission on Arbitration, and was recently designated by ICSID to the ICSID Panel of Arbitrators. She has served as an arbitrator on the Eritrea-Ethiopia Claims Commission, co-director of the Claims Resolution Tribunal for Dormant Accounts in Switzerland and, while with the State Department, the U.S. Agent to the Iran-U.S. Claims Tribunal. Lucy is co-author of the **Freshfields Guide to Arbitration Clauses in International Contracts** and the **Guide to ICSID Arbitration** (both published by Kluwer). She served as President of the American Society of International Law (2008-2010) and is a member of the Council on Foreign Relations.

LUNCHEON SPEAKER



George A. Bermann - Professor, Columbia University School of Law, *Jean Monnet Professor of European Union Law*; *Walter Gellhorn Professor of Law*; *Director, European Legal Studies Center*; affiliated faculty member of the School of Law of the *Institut des Sciences of Politiques (Sciences Po, Paris)* and of the *College d'Europe* (Bruges, Belgium); *Chief Reporter, ALI Restatement of the US Law of International Commercial Arbitration*; *Co-author (with E. Gaillard) of UNCITRAL Guide to the New York Convention*; *director of the American Arbitration Association* and member of the panel of *ICDR arbitrators*; member of roster of *AAA, CPR, CIETAC and KCAB*; member, *Academic Advisory Board of Institute of Transnational Arbitration*; current *President, Académie Internationale de Droit Comparé*; former *President, American Society of Comparative Law*; *international commercial arbitrator*; *Court- and attorney-appointed foreign law expert on French, German, Swiss and EU Law, and transnational litigation and arbitration*; *editor-in-chief American Review of International Arbitration*; *founder and Chair of the Board, Columbia Journal of European Law*; *J.D. Yale Law School, 1971 (editor of the Yale Law Journal)*; *Doctor honoris causa, University of Fribourg, Switzerland*; *Université de Versailles-St. Quentin, France*; *author or editor of the books whose titles include Transnational Litigation; Mandatory Rules of Law in International Arbitration; Introduction to French Law; Cases & Materials on EU Law; Cases & Materials on WTO Law; Transatlantic Regulatory Cooperation; French Business Law in Translation; The Administrative Law of the European Union; WTO Law and Human Health and Safety; WTO Law and Developing Countries; Law and Governance in an Enlarged European Union.*

WINTER FORUM FACULTY



Andrea K. Bjorklund (J.D. (Yale), M.A. (N.Y.U.), B.A. (Nebraska)) is *Visiting Professor at the Faculty of Law at McGill University*; she is also *Professor of Law at the University of California, Davis School of Law*. Professor Bjorklund serves as *co-rapporteur of the International Law Association's Study Group on the Role of Soft-Law Instruments in International Investment Law* and is an *adviser to the American Law Institute's Project on a Restatement of the U.S. Law on International Commercial Arbitration*. Professor Bjorklund has written extensively on *investor-state arbitration issues*, with pieces in publications such as the *Oxford Handbook of International Investment Law*, the *Hastings Law Journal*, the *American Review of International Arbitration*, and the *Virginia Journal of International Law*. She is *co-author (with Meg Kinnear and John Hannaford) of INVESTMENT DISPUTES UNDER NAFTA: AN ANNOTATED GUIDE TO NAFTA CHAPTER 11*. Prior to entering the academy, Professor Bjorklund worked on the *NAFTA arbitration team in the U.S. Department of State's Office of the Legal Adviser*, and also worked for *Commissioner Thelma J. Askey on the U.S. International Trade Commission* and in private practice at *Miller & Chevalier in Washington, D.C.* She clerked for *Judge Sam J. Ervin, III, on the U.S. Court of Appeals for the Fourth Circuit*.



David Caron is the *C. William Maxeiner Distinguished Professor of Law at the University of California at Berkeley*. He is the *Immediate Past Chair of the Advisory Board for the Institute of Transnational Arbitration* and a *co-editor in chief of the World Arbitration and Mediation Review*. Caron is *President of the American Society of International Law*, *Chair of the Global Agenda Council on the Rule of Law of the World Economic Forum*, and a *member of the U.S. Department of State Advisory Committee on Public International Law*. He is a *member of the Executive Council of the ABA Section on International Law* and has served as *Chair of the International Law Section of the Association of American Law Schools*. Caron served as a *member of the precedent panel of the U.N. Compensation Commission for claims arising out of the Gulf War*, *counsel for Ethiopia before the Eritrea-Ethiopia Claims Commission*, and *president of the International Centre for Settlement of Investment Disputes Tribunal in the matter of Aguas del Tunari v. The Republic of Bolivia*. Among other recent arbitrations, he served as a *member of the NAFTA Chapter 11 Arbitration Panels in the matters of Glamis Gold v. The United States and Cargill Industries v. The United States of Mexico*. With *Lee Caplan and Matti Pellonpää*, he is the *coauthor of The UNCITRAL Arbitration Rules: A Commentary (OUP, 2006)*.



Jack J. Coe, Jr. has been on the faculty of Pepperdine Law School since 1984. He regularly conducts LL.M. courses on International Commercial Arbitration and related topics for Pepperdine's Straus Institute. Coe is an Associate Reporter on the ALI Restatement (Third) of International Commercial Arbitration and currently serves as Liaison to the ALI for the ABA's Section of International Law. He has been the Chair of the Academic Council of the Institute for Transnational Arbitration and has held numerous other leadership posts in learned and professional societies. The majority of Coe's over two dozen published essays address arbitration-related topics with an emphasis on practical matters of process design. Coe's arbitration experience began at the Iran-U.S. Claims Tribunal, where he was a Legal Assistant for two years, working principally on oil cases and dual national expropriation claims. Since then, Coe has been both a party-appointed and institutionally designated arbitrator and has consulted both governments and law firms in connection with BIT disputes. He is a member of the California and Washington State bars. His degrees are from UCLA, Loyola, Exeter and the LSE. Coe also holds the Diploma of the Hague Academy of International Law.



Charles Correll, Jr. is a Partner in King & Spalding LLP's San Francisco office. His international arbitration practice focuses on complex commercial, energy and construction disputes, as well as recognition and enforcement proceedings. He is the incoming president of the Northern California International Arbitration Club. He holds a JD from Yale University and a BS (with honors) from the United States Military Academy at West Point. He is a United States Army Veteran.



Teresa Giovannini is a founding partner of LALIVE, a Geneva-based international law firm. Mrs. Giovannini has been involved in more than 140 international arbitration proceedings (under the rules of the AAA/ICDR, CARICI, ICC, ICDR, ICHEIC, ICSID, LCIA, Milan and Venice Chambers of Commerce, SCC, IATA, Swiss Rules and ad hoc, including UNCITRAL) as counsel, sole arbitrator, party-appointed arbitrator and chairperson. Her main areas of practice include industrial engineering, infrastructure projects, aviation, investment disputes, transfer of technology, construction of turnkey factories, pharmaceuticals, luxury goods and art disputes, as well as procurement contracts, licence agreements, agency, joint venture and shareholder agreements. She is registered with the following panels of arbitrators: AAA/ICDR, CCIG; CCIZ; CIArb, CIETAC, Cairo Regional Centre for International Arbitration (CRCIA), DIAC, ICC, ICHEIC and LCIA. Mrs. Giovannini holds key positions in a number of leading international law and arbitration bodies. She has been a member and Vice-President of the London Court of International Arbitration - LCIA (2006-2011). She is currently a member of the Council of the ICC Institute of World Business Law, the International Law Association Committee on Arbitration (Swiss member), the Board of Directors of the American Arbitration Association, the Advisory Board of the Transnational Arbitration Association (ITA), the LCIA Company and the Club of Arbitrators of the Milan Chamber of National and International Arbitration. Ms Giovannini is also a frequent speaker at international conferences on international arbitration (e.g. CPR, IBA, ICCA, ITA, LCIA, CIArb) as well as the author of various publications in the field of international law and arbitration. Teresa Giovannini is fluent in French, English and Italian and has a good knowledge of German.



Jan Paulsson is co-head of our international arbitration and public international law groups and has acted as counsel or arbitrator in many hundreds of international arbitrations, conducted notably under the rules of the ICC, UNCITRAL, ICSID, LCIA, AAA and the Stockholm Institute. He also acted as ad hoc arbitrator at the Olympic Games in Atlanta, Nagano and Sydney. In addition, he has acted before public international law tribunals, including the International Court of Justice. Jan is President of the International Council for Commercial Arbitration, President of the Administrative Tribunals of the OECD and the EBRD, Vice-President of the ICC International Court of Arbitration and a board member of the AAA. He is a former President of the London Court of International Arbitration and the World Bank Administrative Tribunal. Jan holds the Michael Klein Distinguished Scholar Chair and is head of a graduate programme in international arbitration at the School of Law of the University of Miami. He is also a Centennial Professor at the London

School of Economics. He is the author of several textbooks and numerous articles on the subject of international arbitration, in particular the standard reference work *International Chamber of Commerce Arbitration* (3rd edition 2000) which he co-authored with Messrs. W.L. Craig and W.W. Park, and his monograph *Denial of Justice in International Law* which was published by Cambridge University Press in 2005. Jan holds degrees from Harvard College, Yale Law School (where he was an editor of the *Yale Law Journal*) and the University of Paris. He is a US-qualified attorney and an *Avocat à la Cour* in France. He speaks English, French, Spanish and Swedish.



Charles B. Rosenberg is the International Arbitration Law Clerk to The Honorable Charles N. Brower. He is an editor of the *World Arbitration & Mediation Review* and teaches an advanced seminar on International Investment Dispute Settlement at The Hague University of Applied Sciences. He previously practiced international trade and investment law at Hogan Lovells LLP in Washington, DC. He has also worked at the State Department Office of the Legal Adviser and the Department of Justice Office of International Affairs. He graduated first in his class, *summa cum laude*, and *Order of the Coif* from the American University Washington College of Law. He is the author of numerous publications on international arbitration.



Irene Ten Cate is an Associate-in-Law at Columbia Law School, where she writes about international arbitration and civil procedure and teaches the Legal Practice Workshop. Irene's scholarship explores tensions inherent in consent-based adjudication, and she has recently become interested in the role of arbitrators in creating and developing law. Her forthcoming article, *International Arbitration and the Ends of Appellate Review*, analyzes the potential utility of appeals mechanisms in international commercial and investment arbitration from the perspective of the goals advocates of appellate review seek to achieve: error correction in commercial arbitration and lawmaking in investment arbitration. Before entering academia, Irene was a litigation and international arbitration associate at the New York office of Skadden, Arps, Slate, Meagher & Flom for more than six years. While at Skadden, she worked on international and domestic arbitrations as counsel and as secretary to tribunals and prepared articles and presentations on international arbitration topics. She was also involved in several high-profile litigation matters. In addition, Irene interned at the Secretariat of the ICC Court of International Arbitration in Paris and worked as a corporate associate in the Brussels office of Cleary, Gottlieb, Steen & Hamilton. She holds law degrees from the University of Amsterdam and Columbia Law School.



Epaminontas Triantafilou (Assistant Managing Editor) is Legal Counsel at the Permanent Court of Arbitration in The Hague, The Netherlands. Previously he practiced international arbitration with White & Case LLP and served as Legal Assistant to the Hon. Charles N. Brower. Nontas holds BA and MA degrees in Politics from Brandeis University and a JD from The University of Chicago.

LOCAL ITA WINTER FORUM SELECTION COMMITTEE

José E. Alvarez

Andrea K. Bjorklund

Gary Born

Jean E. Kalicki

Abby Cohen Smutny

Jarrold Wong



THE HONORABLE CHARLES N BROWER

Arbitrator

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ESSEX
STREET

Judge Brower's 49-year career in the law has combined extensive practice at the bar with distinguished public service, both national and international, concentrating during 30 years in the fields of public international law and international dispute resolution.

Following eight years with the international law firm White & Case LLP in New York City (1961-69), acting both as a commercial trial and appellate attorney and as criminal defense counsel in prominent cases, Judge Brower resigned his partnership to serve for four years (1969-73) in the United States Department of State in Washington, DC, where as Acting Legal Adviser he was the chief lawyer of the Department and principal international lawyer for the United States Government. Thereafter, he rejoined White & Case LLP, co-founding its Washington, DC office, where his practice, originally concentrated in the litigation of administrative and public law cases, came to be comprised almost exclusively of substantial international arbitrations.

He has served continuously since 1983 as a Judge of the Iran-United States Claims Tribunal in The Hague, The Netherlands, where he sat full-time from 1984 to 1988. That service was interrupted for some months in 1987 by White House service as Deputy Special Counsellor to President Reagan. While continuing to serve in The Hague on a part-time basis, Judge Brower resumed partnership in White & Case LLP from 1988 until joining 20 Essex Street Chambers.

Judge Brower has served as Judge Ad Hoc of the Inter-American Court of Human Rights, as a member of the Register of Experts of the United Nations Compensation Commission in Geneva (UNCC), and as a member of the Panels of Conciliators and Arbitrators of the International Centre for Settlement of Investment Disputes (ICSID) (a member of the World Bank Group). He has represented various governments in proceedings before the International Court of Justice (World Court) and is a member of the panels of arbitrators of a number of arbitral institutions around the world. As counsel or arbitrator he has handled cases on all six continents, principally under the rules of the ICC, UNCITRAL, the LCIA, the AAA, the UNCC, ICSID, SCC, ARIAS and LMAA. These cases have involved a wide variety of commercial disputes as well as issues of public international law, particularly involving the oil and gas sector, major infrastructural projects, expropriations, and other investment disputes, including ones arising under both bilateral and multilateral investment treaties (such as NAFTA and the Energy Charter Treaty).

Most recently Judge Brower's peer listings have been capped by Chambers 2011 UK Directory stating that he "has earned a reputation as one of the leading arbitrators at the UK Bar. He is described as 'one of the most sought out arbitrators in the world, particularly in connection with investment treaty disputes.'" The American Lawyer's Summer 2011 "Focus Europe" Supplement designated him the world's "busiest arbitrator," heading its list of "Ten Top Arbitrators" with 25 qualifying arbitrations (commercial cases involving \$500 million or more and treaty-based investment disputes in which a minimum of \$100 million is in issue). The same authority, published biennially in odd-numbered years, had accorded him the same No. 1 distinction in its 2009 issue, following listing him among those top arbitrators in each of its previous issues (2005 and 2007).

Judge Brower has served as President of the American Society of International Law, Governor of the American Bar Association, Chair of the Institute for Transnational Arbitration, and on the Executive Council of the International Law Association. He has published and spoken around the world on international law and international dispute resolution. He has been a Visiting Fellow at Cambridge University (Jesus College and the Lauterpacht Research Centre for International Law) and had been selected as John A. Ewald, Jr. Distinguished Visiting Professor at the University of Virginia School of Law. In 2009 Judge Brower was awarded the American Society of International Law's prestigious Manley O. Hudson Medal for "pre-eminent scholarship and achievement in international law . . . without regard to nationality," which honor until then had been bestowed on 29 persons, including 10 non-American citizens, during the 53 years since it had been created. In 2010 Judge Brower received the Stefan A. Riesenfeld Award from the University of California's Berkeley School of Law (Boalt Hall) in recognition of "his outstanding achievements and contributions in the field of international law."

[For Extensive CV click here](#)

Specialisations:

- Public international law
- International arbitration
- Investment disputes
- Oil and gas
- Infrastructure projects
- General commercial matters
- Construction disputes
- Treaty-based disputes

Education and Career:

Harvard College, B.A., cum laude (1957). Fulbright Scholar (1967-1958) at the Rheinische Friedrich-Wilhelms-Universitaet, Bonn, and Die Hochschule fuer Politik, now Otto-Suhr-Institut of the Free University of Berlin. Harvard Law School, J.D. (1961). Visiting Fellow, Jesus College (2001) and the Lauterpacht Centre for International Law (2001, 2005, 2010), Cambridge University.

Publications:

The Iran-United States Claims Tribunal, with Jason D. Brueschke, Martinus Nijhoff, The Hague, 1998 (awarded the Certificate of Merit of the American Society of International Law in 1998); International Arbitration in the 21st Century (Co-edited with Richard B. Lillich), Transnational Publishers, 1983; numerous book chapters, articles and shorter publications.

Appointments and Society Memberships:

President, Chairman, Presiding Arbitrator, Sole Arbitrator or co-arbitrator in numerous arbitrations under ICSID, ICC, LCIA, SCC, ARIAS, LMAA and UNCITRAL Rules, as well as ad hoc arbitrations, over the past 30 years; arbitrations include those based on bilateral investment treaties and multilateral ones, e.g., NAFTA and ECT. Member, Register of Experts, United Nations Compensation Commission; Counsel and Advocate in cases before the International Court of Justice.

Lectures and Teaching:

Lectured at The Hague Academy of International Law (1990). Member, Board of Editors, American Journal of International Law. Guest lectures at Yale University School of Law; Duke University School of Law; City University, Hong Kong; University of Leiden; Harvard Law School; University of Mississippi School of Law and Croft Institute for International Studies, University of Mississippi; University of Baltimore School of Law; Fletcher School of Law and Diplomacy; Florida State University College of Law; George Washington University School of Law; Villanova University School of Law; and Max-Planck-Institut fuer Auslaendisches Oeffentliches Recht und Voelkerrecht, Heidelberg.

Quotes:

The American Lawyer's "Focus Europe" June 2009 and again in 2011: world's "busiest" arbitrator;

Who's Who, Commercial Arbitration 2010: one of the 20 "Most highly regarded individuals" worldwide in international arbitration; "a 'big name' whose work is 'absolutely fantastic;'"

Chambers Global 2008 : "generally seen as one of the best arbitrators around when it comes to foreign investment cases";
Global Counsel June 2002 : "one of the top ten international arbitration specialists in the world".

Ambos

Paisley Kathleen



Kathleen Paisley

Partner - Brussels office
Tel: +32 (0) 2 290 04 68
kathleen.paisley@amboslaw.be

Kathleen Paisley is an American lawyer who has been practicing in Belgium and England for more than 20 years. She therefore brings to her cases the unique perspective of someone who has spent more than two decades crossing the cultural and legal divide between Europe and US, and helping her clients understand and capitalize on that knowledge. Kathleen specializes in international dispute resolution, European Union competition law, and all aspects of IT/IP exploitation and development. She serves Belgian and international clients in all sectors, with particular emphasis on issues where an understanding of technology, accounting or finance matters. Kathleen joined Ambos after serving as a partner in the London and Brussels offices of two major international law firms and as General Counsel to an internet company. Before moving to Belgium, she graduated from the Yale Law School in the United States; passed the public accounting exam; and completed a Masters of Business Administration in finance.

EXPERTISE

Contentious Practice.

Arbitration and Mediation. Kathleen acts as counsel and as an arbitrator and mediator in commercial and investor-State disputes under all the major international arbitration rules. She was the longest serving legal advisor to the American arbitrators at the Iran-United States Claims Tribunal in the Netherlands. Cases in which she acted included many of the most important cases decided by the Tribunal involving expropriations of oil assets, construction disputes and complex contractual matters. In private practice, she has acted in arbitrations or mediations of disputes related to:

IP/IT

- Construction and infrastructure projects
- Upstream and downstream energy projects
- Expropriations
- Commercial and contractual matters
- Banking and financial services
- Shareholder disagreements
- Accounting problems
- Government procurement and military sales

Litigation. Kathleen's litigation experience spans the Atlantic from handling pan-European patent disputes between the world's largest semiconductor companies to trying major cases in the US courts. She also provides litigation support in Europe for US litigation matters.

Non-contentious practice

EU Competition Law. Kathleen is an expert in EU competition law and particularly the intersection between intellectual property and competition. She has been involved in some of the most high profile competition matters decided by the European Union institutions over the last two decades and has successfully counselled clients in all aspects of EU competition law.

IP/IT. Kathleen also represents clients in complex commercial matters, particularly as they relate to IT and intellectual property of all kinds. She has advised on the IP aspects of

mergers and acquisitions; licensing arrangements, supply; distribution and agency arrangements; and the panoply of other issues involving the exploitation of IT and IP.

Bars and Courts

- New York, admitted 1987
- District of Columbia, admitted 1988

Education

- JD, Yale Law School, 1986
- CPA Exam, Public Accountancy, 1986
- MBA, Florida Atlantic University (Finance), 1984
- BS, Florida State University (Business Administration), 1981

Judicial and Arbitral Clerkships

- Charles Brower, Richard Allison, and Howard Holtzmann, Iran-U.S. Claims Tribunal, 1987- 1991
- The Honorable Gilbert S. Merritt, U.S. Court of Appeals for the Sixth Circuit. 1986-1987