Challenges to the Legitimacy of International Arbitration

29th ITA Workshop and Annual Meeting

June 14 - 16, 2017

Marriott at Legacy Town Center
Plano, Texas (Dallas)

Highlights

| Keynote: Gary Born (Wilmer Cutler Pickering Hale and Dorr LLP, London) |
| Featured speakers include Meg Kinnear (Secretary-General, International Centre for Settlement of Investment Disputes (ICSID), Washington, D.C.), and Jacomijn van Haersolte-van Hof (Director General, London Court of International Arbitration (LCIA), London) |
| Expert perspectives on the legitimacy of the process, the decision makers and the result |
| Mock scenes: arbitrator challenges and deliberations |
| Young Lawyers Roundtable |
| Welcome Reception |
| Workshop Networking Dinner at Mexican Sugar Cantina |

Workshop Co-Chairs:

| Caline Mouawad, King & Spalding LLP, New York |
| Jeremy K. Sharpe, Shearman & Sterling LLP, London |
| Prof. Jarrod Wong, University of the Pacific, McGeorge School of Law, Sacramento |
Introduction
Until recently, international arbitration was widely seen as fair, neutral, and effective. The field’s rapid growth reinforced this perception, helping establish international arbitration as the default mechanism for resolving transnational disputes.

Today, this perception holds less currency. Many now doubt the fairness of the arbitration process, the integrity of the decision-makers, and the legitimacy of awards obtained through “private” justice. These criticisms are not limited to domestic or investment arbitration, but increasingly impact international commercial arbitration as well. Nor is the debate confined to small circles of academics and NGOs; it has spread to politicians, journalists, and the wider public.

In this year’s annual program, the ITA will explore the most important challenges to the legitimacy of international arbitration. In a series of lectures, debates, panels and mock scenarios, leading international arbitration experts from around the world will seek to identify real and perceived problems and propose viable solutions to the “legitimacy crisis” in international arbitration. With active involvement from all participants, the Workshop aims to add an important voice to the most pressing issues facing international arbitration today.

3:00 REGISTRATION

3:30 WELCOME TO THE WORKSHOP
— Abby Cohen Smutny, Chair, ITA Advisory Board, White & Case, LLP, Washington, D.C.

DALLAS ROUNDTABLE
Presented by the ITA Young Arbitrators Initiative Committee

3:40 INTRODUCTION TO THE NEW YOUNG ITA
— Montserrat Manzano, Chair, Young ITA, Von Wobeser y Sierra, SC, Mexico City
— Silvia Marchili, Vice Chair, Young ITA, King & Spalding LLP, Houston

3:50 A TRIP AROUND THE WORLD WITH ITA’S BOARD OF REPORTERS
This session will bring our audience up to speed on the latest arbitration developments from particular countries and regions around the world, presented by selected Country and Institutional Reporters of the ITA Arbitration Report (ITAAR) at KluwerArbitration.com. In a highly interactive and varied session which gives an overview on relevant issues.

MODERATOR: Monique Sasson, Co-Managing Editor, Board of Reporters, KluwerArbitration.com, New York

PANELISTS:
— North America: Sonia Faber, Debevoise & Plimpton, New York, Reporter for USA
— Middle East: Jalal El Ahdab, Ginestí Magellan Paley-Vincent, Paris, Reporter for Lebanon
— East Asia: Arthur Dong, AnJie Law Firm, Beijing, Reporter for China
— South Asia: Aditya Singh, White & Case, Singapore, Reporter for India
4:45 PRACTICING INTERNATIONAL ARBITRATION DURING CHALLENGING TIMES: SHOULD WE ALL HAVE GONE FOR SAFE CORPORATE LAW CAREERS INSTEAD?!

In a field that some went as far as calling saturated, our speakers will address several challenges facing young practitioners and share their insights into the many opportunities and career development options that are still available. Panelists will share their views on different non-linear careers, over- and under-specialization, and discuss possible paths for young practitioners in addition to the traditional partnership track pursued by most Big Law associates.


PANELISTS:
— Kate Brown, Curtis, Mallet-Prevost, Colt & Mosle, S.C., Mexico City
— Ben Love, Freshfields Bruckhaus Deringer, New York
— Yanett Quiroz, International Case Director, ICDR, Houston
— Deva Villanúa, Armesto & Asociados, Madrid

5:25 CLOSING REMARKS

5:30 WORKSHOP WELCOME RECEPTION

7:15 WORKSHOP DINNER (Optional)

MEXICAN SUGAR COCINA Y CANTINA
The Shops at Legacy
7501 Lone Star Dr B150

Please indicate on the registration form if you wish to attend and if you also wish to bring a guest.

Ticket price: $85 per person.

The dinner is walking distance or a short Uber ride away from the hotel.

Please dress comfortably. This will be a fun and casual evening.

SCHEDULE

June 14

4:45 PRACTICING INTERNATIONAL ARBITRATION DURING CHALLENGING TIMES: SHOULD WE ALL HAVE GONE FOR SAFE CORPORATE LAW CAREERS INSTEAD?!

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9:00  WELCOME BACK
— Abby Cohen Smutny, Chair, ITA Advisory Board, White & Case, Washington, D.C.

9:05  INTRODUCTION TO THE PROGRAM
— Jeremy Sharpe, Workshop Co-Chair

9:10  KEYNOTE: THE LEGITIMACY OF INTERNATIONAL ARBITRATION
The keynote will examine the legitimacy of international arbitration from an historical and contemporary perspective.

INTRODUCTION: Prof. Jarrod Wong, Workshop Co-Chair
KEYNOTE SPEAKER: Gary Born, Wilmer Cutler Pickering Hale and Dorr LLP, London
COMMENTATOR: Prof. José Alvarez, NYU School of Law, New York

10:00  LEGITIMACY OF THE DECISION-MAKERS (PART 1)
A hitherto cornerstone of arbitration is the parties’ right to nominate arbitrators. But this presents formidable legitimacy challenges: Might it invite partiality or its appearance, and undermine the legitimacy of the award? Should privately appointed arbitrators who are not otherwise accountable determine issues of national law on an ad hoc basis without having to defer to court judgments or to a State’s exercise of its police powers, including on matters that impact the larger community? This panel will take the form of a debate with panelists arguing for and against preserving the parties’ traditional right to appoint arbitrators.

INTRODUCTION AND MODERATOR: Prof. Jarrod Wong, Workshop Co-Chair

PANELISTS:
— Brian Egan, Steptoe & Johnson LLP, Washington, DC
— Prof. Chiara Giorgetti, University of Richmond School of Law, Richmond
— Salim Moollan QC, Essex Court Chambers, London
— Michael E. Schneider, Lalive, Geneva

11:00  BREAK

11:20  LEGITIMACY OF THE DECISION-MAKERS (PART 2)
Arbitrators may wear many other hats, including as counsel, commentator, and expert witness. This practice increases the risk of real or perceived conflicts of interest and implicates the legitimacy of the arbitral process. The arbitration community has drafted many guidelines to address today’s increasingly complex arbitrator conflicts, but parties, tribunals, institutions, and courts often treat them differently.

INTRODUCTION OF THE MOCK: Jeremy Sharpe, Workshop Co-Chair

SCENE 1: CHALLENGE AND ARGUMENT
Petitioner’s Counsel............................................................................................................................................Prof. Charles H. Brower, II
Wayne State University Law School
Detroit

Respondent’s Counsel........................................................................................................................................Sarah Vasani
Addleshaw Goddard LLP
London

Judge...........................................................................................................................................................................Hon. Rosemary Barkett
Judge, Iran-United States Claims Tribunal
Former Judge, U.S. 11th Circuit, and Chief Justice, Florida Supreme Court
The Hague

Arbitrator...................................................................................................................................................................John R. Crook
George Washington University Law School
Washington, DC
Scene 2: Deliberations and Decision
Panel Discussion and Audience Q&A

12:40 Luncheon

A Conversation With
Dominique Brown-Berset
Brown&Page
Geneva

With

Prof. Susan D. FrancK
Chair, ITA Academic Council
American University Washington College of Law
Washington, DC

Sponsored by

2:00 Legitimacy of the Process

International arbitration allows parties to choose and design their own private dispute resolution process. But has it gone too far? Criticism of the arbitral process as a separate and parallel legal system abounds. This roundtable will take an introspective and honest look at whether the arbitral process is too autonomous from domestic law and domestic court oversight, whether it should be held more accountable and if so, how, and whether it deserves to be viewed as fair and just (among other topics).

Introduction and Moderator: Caline Mouawad, Workshop Co-Chair

Panelists:
— Jean E. Kalicki, Kalicki Arbitration, New York
— Karin Kizer, Attorney-Adviser, U.S. Department of State, Washington, D.C.
— Ucheora Onwuamaegbu, Arent Fox LLP, Washington, D.C.

3:00 Break

3:20 Regulating Arbitration Ethics? A Conversation

Few topics divide the international arbitration community today like the question of regulating arbitration ethics. Whether a global code of arbitration ethics for counsel and arbitrators is necessary or desirable, what its content should be and whether a transnational enforcement mechanism is appropriate are among the questions that permeate the debate and this session. Looming in the background of this conversation is the overarching quest for an answer that maintains—some may say restores—both the integrity and the appearance of integrity of a system that continues to come under attack.

Introduction and Moderator: Caline Mouawad, Workshop Co-Chair

— Jan Paulsson, Three Crowns, Miami
— Jacomijn van Haersolte-van Hof, Director General, London Court of International Arbitration, London
Arbitration cases today often raise enormous financial and public policy stakes. Many arbitration critics question the system’s preference for finality and efficiency over correctness. Is appellate review the answer? How well are national courts responding? Are there means of improving the perceived legitimacy of outcomes in ISDS within the existing confines of the system? This panel will consider and comment on a specific proposal to improve legitimacy of the result, as well as other potential alternatives.

**INTRODUCTION AND MODERATOR:** Jeremy Sharpe, Workshop Co-Chair

**PROONENT AND DISCUSSANT:** Bart Legum, Dentons LLP, Paris

**COMMENTATORS AND DISCUSSANTS:**
- Silvia Marchili, King & Spalding LLP, Houston
- Prof. Dr. Stephan W. Schill, Professor of International and Economic Law and Governance, Amsterdam Center for International Law - University of Amsterdam, Amsterdam
- John Townsend, Hughes Hubbard & Reed, LLP, Washington, D.C.

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**SCHEDULE**

**June 15**

**4:10** LEGITIMACY OF THE RESULT: INCREASING THE PERCEIVED LEGITIMACY OF OUTCOMES IN ISDS: A PROPOSAL

Arbitration cases today often raise enormous financial and public policy stakes. Many arbitration critics question the system’s preference for finality and efficiency over correctness. Is appellate review the answer? How well are national courts responding? Are there means of improving the perceived legitimacy of outcomes in ISDS within the existing confines of the system? This panel will consider and comment on a specific proposal to improve legitimacy of the result, as well as other potential alternatives.

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**5:10** CONCLUDING REMARKS

— Abby Cohen Smutny

**5:15** ADJOURN

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**SCHEDULE**

**June 16**

**9:00** ITA FORUM

Special informal Q&A session with LCIA Director General Jacomijn van Haersolte-van Hof and LCIA President-Elect Audley Sheppard

**9:50** BREAK

**10:00** ITA FORUM

The ITA Forum is an informal, off-the-record discussion of current developments and concerns in international arbitration among ITA members, Workshop faculty, Workshop registrants and special guests. The agenda for this open discussion is determined by the participants.

**12:00** ADJOURN

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**ABOUT THE INSTITUTE FOR TRANSNATIONAL ARBITRATION**

Established in 1986 as part of The Center for American and International Law (CAIL), ITA provides advanced education for arbitrators, advocates, judges, business executives, government officials and other professionals concerned with transnational arbitration of commercial and investment disputes. Through its programs, scholarly publications and membership activities, led by many of the top global experts and supported by many of the world’s most actively engaged corporations, law firms and individual practitioners, ITA has become an important global forum on contemporary issues in the field of transnational arbitration. For more information, visit cailaw.org/ita.