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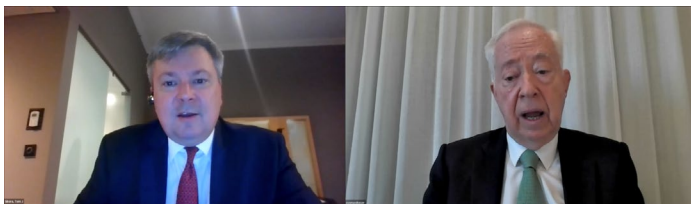
Number 3

2022 ITA-ALARB AMERICAS WORKSHOP

Report by Juan Ignacio Guerra, Zuleta Abogados, Bogotá

The 2022 ITA-ALARB Americas Workshop: “*Environmental vs. Investment Protection: Are They Mutually Exclusive?*” took place on September 8 and 9, 2022. The workshop was co-chaired by Gabriela Álvarez Ávila (DLA Piper, Mexico City) and Miguel López Forastier (Covington & Burling, Washington D.C.).

The workshop began with welcoming remarks by Tom Sikora (ITA Chair and Senior Counsel, Exxon Mobil Corporation, Houston) and Claus von Wobeser (ALARB President and Von Wobeser y Sierra, Mexico City).



ITA Chair Tom J. Sikora (Senior Counsel, Exxon Mobil Corporation, Texas) and Claus von Wobeser (ALARB President and Von Wobeser y Sierra, Mexico City)

Keynote Address: Overview of the Meaning of Balancing Business Decisions and Environmental Regulatory Challenges

Angela Amos (Head of Commercial Innovation & Strategy, AES Clean Energy, Houston) addressed two scholarly approaches on business sustainability: (i) enterprise integration, based on a reactive and inward-looking approach; and (ii) market transformation, based on a proactive and outward-influencing approach.



Angela Amos (Head of Commercial Innovation & Strategy, AES Clean Energy, Houston)

AES implements a market transformation approach, based on three key considerations: (i) the public interest standard is becoming more inclusive; (ii) regulators and companies must consider multiple stakeholder interests; and (iii) entities must manage reputational risk and public perception, even if their activity is legally supported.

These case studies illustrate how AES implements this approach: (i) AES and the Kaua’i Island Utility Cooperative (Hawaii) created solar-plus-storage systems that benefited multiple stakeholders; (ii) AES powers Microsoft’s and Google’s data centers with 24/7 carbon-free energy; (iii) The Grafton Solar project in Massachusetts allows for clean and reliable energy production while crops and cattle graze underneath panels; and (iv) through

the “*Mujeres con Energía*” campaign – which began in Colombia and now extends across the Americas – AES supports women by hiring them across the Chivor hydro facility and the San Fernando Project. The aim of these experiences is to pave the way for a universe that is sustainable, that is environmentally friendly, and that allows for the best practices of the law.

What Have We Learned From Recent Investment Cases In Which Environmental Issues Were Center Stage?

Sebastian Wuschka (Luther, Hamburg) moderated the panel composed of John A. Terry (Tory’s, Toronto), Abby Cohen Smutny (White & Case, Washington, D.C.), and Ana María Ordóñez (National Legal Defense Agency of the State, Bogotá).



Clockwise from Top Left: Sebastian Wuschka (Luther, Hamburg), John A. Terry (Tory’s, Toronto), Ana María Ordóñez (National Legal Defense Agency of the State, Bogotá), and Abby Cohen Smutny (White & Case, Washington, D.C.)

John A. Terry highlighted the importance of the fair and equitable treatment (FET) standard regarding environmental regulation.

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Correspondence regarding *News & Notes* should be addressed to Editor Hansel Pham, White & Case LLP, 701 Thirteenth Street, NW, Washington, DC 20005; hpham@whitecase.com.

Correspondence regarding ITA should be addressed to ITA Director David Winn at The Center for American and International Law, 5201 Democracy Drive, Plano, Texas 75024; dwinn@caillaw.org.

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A majority of the *Eco Oro* tribunal found that the state had violated the FET standard because of court decisions and regulations that sent contradictory messages to the investor (similar to the approach adopted by the tribunal in the *Infinito* case). The language of the investment treaty between Canada and Colombia in the *Eco Oro* case allowed for this interpretation since it implied that the possible payment of compensation to an investor does not prevent the state from adopting environmental measures. The damages ordered in the *Eco Oro* case only arose from the state’s unfairness regarding the delimitation of the high-altitude wetlands (“páramo”) where the investor’s mining operation would be partially conducted. Finally, he mentioned challenges related to the filing of counterclaims under the state’s domestic law since BITs generally specify that the law of the arbitration comprises the treaty provisions and public international law.

Abby Cohen Smutny addressed a trend present since at least the *Santa Elena* case, according to which interference with property for environmental reasons could be a valid public purpose. However, in those cases, the rules and principles for investment protections apply. Instead of falling into a false dichotomy between environmental and investment protections, these two areas must be balanced, taking into consideration factors such as whether the measure is nondiscriminatory, based on *bona fide* grounds, and even analyzing the fairness of the domestic regulation.

According to the findings of the *Eco Oro* tribunal, Ms. Cohen Smutny explained: “The several tribunals that have analyzed these provisions have been consistent in focusing on the fact that the language of these so-called exceptions does not exclude environmental measures but, rather, limits the remedies that are available to the party that made the claiming of breach.” Finally, Ms. Cohen Smutny highlighted that counterclaims could be a proper tool for a state in an investment arbitration, whenever: (i) the tribunal has jurisdiction; (ii) the counterclaim has a nexus to the dispute and the scope of consent, and is compliant with the formal requirements; and (iii) the state establishes causation for the alleged amount of damages.

Ana María Ordóñez addressed the concerns generated by the *Eco Oro* tribunal’s findings regarding the non-disputing party submissions and joint interpretation of the MST clause contained in the Canada-Colombia FTA since it did not reflect the importance that states give to those instruments. As for environmental exceptions, Ana María Ordóñez indicated that arguing that a state could take environmental measures while still needing to pay compensation, eliminates the effect of environmental exceptions in investment treaties. Finally, she highlighted how counterclaims in investment arbitrations (as seen in the *Burlington* and *Perenco* cases) are proper tools to: (i) calculate and recover damages in an efficient manner; (ii) address the scope and all the positions involved in these types of disputes, in which the public interest is involved and, eventually, could be subject to and ruled by domestic law; and (iii) strike a balance in the procedure by granting the right of the investor to claim any breach in investment protection but also be accountable for its actions during the course of the investment.



Clockwise from Top Left: Attila Massimiliano Tanzi (3VB Chambers, London), Mairée Uran-Bidegain (Ministerio de Relaciones Exteriores de Chile, Santiago), Mónica Jiménez (Chief Strategy, Sustainability and Legal Officer, GeoPark, Bogotá), and Bernardo de la Garza (Independent Consultor, Mexico City)

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What Are The Challenges Ahead From Both A Policy Perspective And Investment Protections?

Attila Massimiliano Tanzi (3VB Chambers, London) moderated this panel, composed of Mairée Uran-Bidegain (Ministerio de Relaciones Exteriores de Chile, Santiago), Bernardo de la Garza (Independent Consultor, Mexico City), and Mónica Jiménez (Chief Strategy, Sustainability and Legal Officer, GeoPark, Bogotá).

Mairée Uran-Bidegain indicated that any apparent tension between environmental and investment protections is starting to fade, giving way to policy decisions and treaty provisions aimed at enhancing the protection of long-term foreign investments that respect the environment. This observation is based on three factors: (i) Latin American countries are incorporating in their investment agreements explicit provisions seeking to ensure that environmental concerns are appropriately considered, e.g., the 2019 Argentina-Chile FTA and Chile's attempted modernization of the 2002 EU-Chile Association Agreement; (ii) a change in the world's economic paradigm, making corporations and their owners accountable for the impact of production or consumption on the environment; and (iii) The Vienna Convention on the Laws of Treaties, which provides adequate tools for international courts and tribunals to reconcile the application of environmental and investment protection provisions. The public demands for sustainable and inclusive developments will be slowly translated into new treaty provisions. Finally, Latin American states in Working Group 3 of the Intergovernmental Panel on Climate Change (IPCC) have highlighted the need to better develop counterclaims as a tool to address the tensions between environmental disputes and investment protections.

Bernardo de la Garza explained how Mexico's 2013 Constitution enacted an all-encompassing energy reform allowing the private sector to contribute to its growth. In 2018, Mexico elected a new government that does not agree with this reform and, therefore, is increasing the market power of government-owned companies, rendering useless the autonomous authorities and limiting the participation of private investors. These actions have created an uncertain legal framework for future investments, generated a litigious environment with investors present in Mexico before the enactment of the mentioned measures, and caused the UN to characterize Mexico's efforts as "highly insufficient." Nevertheless, Mexico's fundamentals regarding climate change investment remain strong since the state requires plenty of investments to achieve its environmental goals; it would be impossible for Mexico to face its environmental problems without the help of investment agreements.

Finally, Mónica Jiménez provided a corporate perspective. She outlined Colombia's current situation regarding environmental and investment protections, in which the new government intends to enact further regulations aimed at: (i) granting communities a say on how energy projects should go forward; (ii) accelerating the climate change transitions in Colombia by decreasing investments in exploration and fracking; and (iii) ratifying the Escazú Agreement. These changes have created a "waiting period" for companies to see how all these possibilities will be reflected in local law and how it will affect investments. Companies are aware that to achieve economic growth in the countries where they operate they need to adapt in response to climate change, stakeholder capitalism, and energy transition.

Rule of Law Presentation: Latin America as the Crucible for Developing a Customary International Law on State Responsibility to Aliens

Elena Mereminskaya (ITA Americas Initiative Chair and Wagemann Abogados & Ingenieros, Santiago), introduced the workshop's Rule of Law Latin America Presentation, celebrating the 75th Anniversary of the Center for American and International Law. The presentation was made by Santiago Montt (COO, Los Andes Coper Ltd. and President Minera, Vizcachitas, Santiago), in the memory of Guillermo Aguilar-Álvarez: "Another Latin American hero of international arbitration."



Elena Mereminskaya (ITA Americas Initiative Chair and Wagemann Abogados & Ingenieros, Santiago) and Santiago Montt (COO, Los Andes Coper Ltd. and President Minera, Vizcachitas, Santiago)

Santiago Montt began by dividing the history of the protection of aliens and investors into three distinctive substantive eras: The Full Protection and Security Era ("FPS") (19th and early 20th centuries), the Expropriation Era (20th century), and the Fair and Equitable Treatment Era (21st century). During the FPS era, the region was eager to attract foreign investment, which led to the flourishing of European and American interests. Military intervention during the FPS era was a remedy openly defended and practiced by the United States and European countries (known as "gunboat diplomacy"). In parallel, Latin American countries failed to enact constitutional and legal arrangements to bring peace and prosperity, which led to conflicts between countries and to internal struggles. This scenario made FPS the most representative absolute or minimum standard of protection for aliens. The alien protection during the FPS era in Chile was put into practice in two cases: (i) *The Baltimore Affaire* (1891) and (ii) *The Frederick H Lovett Case* (1894).

These types of cases highly influenced the development of the customary international law of protection of aliens during the 19th century. Liberal Latin American lawyers were the authors of four key contributions: (i) the prohibition of self-help, summarized by Rui Barbosa during the 1907 Second Convention of the Hague: "Sovereignty is the prime and elemental right of constituted states. Therefore, sovereignty signifies equality. In theory as in practice, sovereignty is absolute, it knows no rates;" (ii) national treatment as the general rule, created by Venezuelan Andrés Bello – then articulated as the Calvo Doctrine – who, in his 1833 *Principles of Ius Gentium*, explained that the alien entering a foreign state: "agrees tacitly to be subject to the local laws and jurisdiction;" (iii) exhaustion of legal remedies as an exception to the national treatment principle, based on Andrés Bello's 1844 edition of his *Principles of International Law*; and (iv) FPS and Due Diligence, which was illustrated in the *Frederick H Lovett* case and also in Andrés Bello's 1844 edition of his *Principles of International Law*. This principle is currently accepted in international law but was not a specific matter in Latin America during the 19th century (The *Montijo* case – *United States v. Colombia* – 1875).

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Young Lawyers Roundtable: To Extract or Not to Extract? Legitimate Expectations and Environmental Protections in Latin America

Karina Sauma (Young ITA Vice Chair and DJ Arbitraje, San Jose) and Sebastian Briceño (ALARB Next Generation Director and Debevoise & Plimpton, New York), moderated the workshop's final panel, composed of Daniela Páez (Hebert Smith, New York), Diego Rueda (Freshfields Bruckhaus Deringer, New York), and Sylvia Sámano (Hogan Lovells, Mexico City).



Clockwise from Top Left: Sebastian Briceño (ALARB Next Generation Director and Debevoise & Plimpton, New York), Karina Sauma (Young ITA Vice Chair and DJ Arbitraje, San Jose), Diego Rueda (Freshfields Bruckhaus Deringer, New York), Daniela Páez (Hebert Smith, New York) and Sylvia Sámano (Hogan Lovells, Mexico City).

Sylvia Sámano provided a definition of “legitimate expectations,” according to which states are required to maintain a certain degree of stability in the regulatory framework, which is relied upon by investors when making investments. Even though a state has the right to change its regulations, the manner and the timing of the changes are relevant (in a case-by-case basis) to determine if an investor has the right of investment protection. For example, the tribunal in the *Charanne* case used the doctrine of legitimate expectations to conclude that, even though Spain had made policy changes regarding the exploitation of photovoltaic plants, these changes were justified and did not violate the treaty in question. Recent BITs (e.g., the EU-Canada CITA), have included specific provisions regarding the protection of legitimate expectations.

Diego Rueda addressed two misconceptions regarding environmental and investment protections in mining disputes: (i) investors do not generally argue that the legal framework cannot change, but request that the state respect the rights generated with the investment; and (ii) investors do not generally seek to bypass environmental regulation but request compensation assuming that their project will not go forward (as seen in *Eco Oro*, *Bear Creek*, and the ongoing *Glencore v. Bolivia* cases). The one case in which the apparent tension could exist is the ongoing *Greenland Minerals* case, where the investor publicly informed the tribunal that it seeks to proceed with its mining project and requested that the tribunal order Denmark to allow for the mine's operation.

In principle, the ratification of treaties such as the Paris Agreement will probably have no impact on the analysis of legitimate expectations. However, if there is an impact, it would likely be twofold: (i) an investor cannot form legitimate expectations if it fails to fulfill the due diligence obligations that may be applicable in each case (as discussed in Professor Sands' dissenting opinions in the *Eco Oro* and the *Bear Creek* cases); or (ii) environmental

treaties can impose stricter obligations on states that may help investors form legitimate expectations (as discussed in Professor Grigera's dissenting opinion on the police powers exception in the *Eco Oro* case). Finally, it would not be necessary to reform investment treaties to integrate environmental obligations, since several investment treaties already include clauses that give states greater space to regulate such matters.

Regarding tourism projects, Daniela Páez explained how the tribunal in the *David Aven* case interpreted the CAFTA-DR, based on a provision that subordinated the investor's rights to the rights of the state to ensure the investments were carried “in a manner sensitive to environmental concerns.” Based on this provision, the tribunal concluded that the state did not have an absolute right to implement environmental regulations. Said right had to be exercised in a fair and nondiscriminatory fashion and following the principles of due process. Regarding the protection of communities in extractive industries, Daniela Páez addressed the recent filing of *amicus briefs* by five NGOs before Colombia's Constitutional Court, advocating for indigenous communities' rights in relation to the arbitrations commenced by Glencore and Anglo-American. Additionally, she explained how, in the *Crystallex* case, the tribunal found that the reasons provided by the state to deny the permit for the investor's mining operation were not based on technical studies or scientific research and were not invoked in a timely or transparent manner.

INTRODUCING THE COUNTRY DELEGATES FOR THE AMERICAS INITIATIVE



Julio César Rivera Jr. is the Country Delegate for Argentina. He joined Marval O'Farrell Mairal in 2019 as a partner in the Litigation & Arbitration department. He specializes in complex commercial litigation, international and domestic commercial arbitration, insolvency, and constitutional law. Julio César has been recognized by Chambers & Partners Latin America as a leading lawyer in Dispute Resolution in Argentina. He graduated in law with honors from the Universidad Católica Argentina (1997), obtained an LL.M from Harvard Law School (2000), and has a PhD in law from the Universidad de Buenos Aires (2008). He is also a Professor at the Universidad de San Andrés Law School, where he teaches the “International Investment Law” and “Commercial Arbitration” courses. He is also Global Adjunct Professor of Law at NYU School of Law in the framework of NYU's program in Buenos Aires.



Rodrigo Araujo Gabardo is one of the Country Delegates for Brazil. He is an attorney focusing on business consulting, arbitration and environmental law. He acts as a business consultant for foreign companies in the Brazilian market, with American, French, Japanese, and United Arab Emirates companies, among others, as his clients. He also advises Brazilian companies on international business, having participated in deals in the United Arab Emirates, the US, Argentina, France, and Uruguay. In the commercial arbitration area, the Lee, Taube & Gabardo law firm, of which Mr. Gabardo is a member, is well-known in southern Brazil, having participated in proceedings in the most important national and international arbitration chambers. Mr. Gabardo also holds a PhD in International Business Law from the Law School of the University of São Paulo, Brazil. His thesis was titled: The Existence, Validity and Effectiveness of the Arbitration Agreement - A Contribution to the Study of its Legal Nature.

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Flavia Mange is one of the Country Delegates for Brazil. She is co-founder of and partner at Mange & Gabbay Sociedade de Advogados, currently named Flavia Mange Advogados. She has carried out numerous arbitration proceedings in Portuguese and English, in accordance with various regulations under Brazilian and international institutions, as a lawyer, sole arbitrator, co-arbitrator and president.

Ms. Mange has extensive experience in strategic litigation, corporate law and judicial procedures related to arbitration as well as international legal cooperation procedures, particularly the approval of foreign sentences. Ms. Mange has been a member of the Executive Committee of the Rising Arbitrators Initiative (RAI) since 2021 and of the ICC Commission on Arbitration and ADR, having participated in the working group "ADR and Arbitration" since 2020. She was also a representative of the ICC Young Arbitrators Forum (YAF) (2017-2019) and has been recognized by Who's Who Legal.



Orlando Palominos is the Country Delegate for Chile. He is a lawyer specializing in Civil Litigation and Arbitration at Lembeye Abogados. He specializes in dispute resolution mainly in the field of construction as well as in disputes related to state-concession projects. Orlando attended the Pontificia Universidad Católica de Chile and has a Master of Laws from Columbia University. He is also a professor in the Department of Private Law at the Pontificia Universidad Católica de Chile, and is the author

of several publications on private law, public-private partnerships, and arbitration. His arbitration experience is mainly in relation to civil liability, construction, and public infrastructure projects, with a special focus on public works concessions and controversies before Arbitration Commissions and the Technical Concessions Panel.



Santiago Díaz-Cediel is the Country Delegate for Colombia. He is a Professor in the Faculty of International Public Law at the Universidad del Rosario in Colombia. He has been a Professor in Asynchronous Modality of the Distance Certificate in International Arbitration at the American University (Washington College of Law), a Visiting Professor of International Arbitration at the Law School of the University of La Sabana, and a Visiting Professor of the

Law of the Sea in the International Relations Program at the University of Bogotá. Santiago is an attorney focusing on International Dispute Resolution, International Public Law and International Arbitration. He leads the International Arbitration Department at the Arbitration and Conciliation Center of the Bogotá Chamber of Commerce, where he supervises all international arbitration cases administered there. He is a member of institutional lists of international arbitrators, and has served as an international arbitrator and acted as Secretary or Institutional Counsel in more than 50 international commercial arbitration cases under the UNCITRAL Rules.



Sofía Gómez Ruano is the Country Delegate for Mexico. She is an attorney focusing on commercial arbitration, serving both as arbitrator and counsel on commercial contract disputes (distribution, commission, franchise, purchase and sale of shares, and agreements between shareholders, among others), compliance with corporate obligations, protection of personal data, and security of information. Sofía is a named Fellow Arbitrator at the Chartered Institute of Arbitrators and specialized in commercial

arbitration at the Autonomous Technological Institute of Mexico (ITAM), in investment arbitration at the American University Washington College of Law, and in information and communications at the Mexican

Academy of Computer Law (AMDI). She is also certified as a personal data protection professional by the International Association of Privacy Professionals. Sofía is currently a member of the General Council of Mexican Lawyers (CGAM) and of the Mexican Institute of Arbitration (IMA), and is also Technical Coordinator of the Arbitration Commission of the National Association of Business Lawyers (ANADE). She was recently appointed Vice President of the Digital Economy Commission of the International Chamber of Commerce in Mexico.



José Antonio Moreno Rodríguez is the Country Delegate for Paraguay. He holds an LL.M from Harvard University, specializing in corporate, banking, capital markets, foreign investments, and international contracting. He is the founding partner of Altra Legal, considered a key player in the field of international arbitration in the region. He is an Annulment Committee Member on several ICSID cases and a Member of Court and active Arbitrator before the ICC, the Permanent

Court of Arbitration, and the Court of Arbitration for Sports. He currently represents parties before international arbitration tribunals and has served as an arbitrator in more than 12 cases. He is a member of the UNIDROIT Governing Council, a member of the Inter-Judicial Committee of the OAS, and author of its Guide on International Contracts. Jose acted as an Expert for the Working Group that drafted the Hague Principles on International Contracts and was a drafter of the forward-looking Paraguayan Law on International Contracts. He is the author and co-author of several books and articles published in the Americas, Europe, and Asia. He is also a lecturer at The Hague Academy of International Law and several leading universities in the Americas and Europe.



Edwin Pezo is the Country Delegate for Peru. He is part of the international arbitration and litigation practice at Estudio Muñiz. He represents domestic and international clients before arbitration tribunals and local courts in complex business disputes. He has extensive experience in constitutional litigation and serves also as arbitrator in commercial cases under the auspices of well-known institutions. He also teaches Arbitration and International Law. He is a professor of Common Law Contracts and

Comparative Law at the Pontifical Catholic University of Peru. Edwin obtained his Juris Doctor in International Arbitration at the University of Miami School of Law. He also holds a Master of Laws at University from the Pennsylvania Carey Law School.



Soledad Díaz is the Country Delegate for Uruguay. She is a member of the FERRERE Litigation and Arbitration team. Ms. Díaz focuses on cross-border investment, and commercial and corporate dispute resolution, typically for international clients. She regularly advises on arbitration matters (under ICC, ICSID, ICDR, and other rules) and on matters of jurisdiction, arbitration clauses, and recognition of awards. She also regularly advises on investment

disputes and on alternatives for structuring foreign investments under BITs signed by Uruguay. She has represented clients in important construction, energy, and corporate disputes, both in arbitration and litigation. Her recent experience includes advice to the main contractor for a combined cycle power plant in an ICC proceeding and related judicial proceedings, to the main contractor for a pulp plant in an ICC proceeding against the project's owner and subcontractors, and to the main contractor for a cellulose plant in an ICC proceeding against the project owner. She has also acted as counsel in international arbitrations related to gas production and distribution against governments and government corporations, and in investment arbitrations, including one for over US\$ 3 billion deriving from the frustration of a mining project in Uruguay. She also has experience in expropriation disputes, injunctions, actions for access to public information and provisional remedies, as well as in trademark and antitrust actions (such as the dispute over rebroadcast rights for the 2010 FIFA Soccer World Cup in South Africa). In 2012 she was a Research Associate at Queen Mary University of London at the Center for Commercial Law Studies.

UPDATES FROM YOUNG ITA

Report by Ciara Ros (Young ITA Liaison,
Vinson & Elkins, London)

It has been a busy second half of the year for Young ITA, with sixteen events held across a number of regions. Highlights have included the much anticipated ICCA Edinburgh, which was delayed for two years due to Covid-19, and took place over a beautiful three days in Scotland. Young ITA hosted a networking event for young practitioners, with a much-needed return for in-person discussion. Also in the UK, Young ITA held a panel conference addressing the energy transition with Robert Landicho, Emma Johnson and Laura Sochat, moderated by Ciara Ros, followed by networking. This was a lively discussion, covering everything from the importance of the mining sector to the energy transition through to the key dispute areas that are likely to arise in the coming years. Young ITA Mexico held an advocacy skills workshop in November, teaching young practitioners some key tips and tricks for starting out in advocacy, with a similar workshop run by Young ITA South America. These practical workshops are invaluable to junior practitioners and will continue to appear in Young ITA's programming for 2023, alongside a host of other insightful panel sessions and networking events.



Young ITA Members met for networking drinks at ICCA Edinburgh 2022, on September 19, 2022.



Panelists Laura Sochat (Charles River Associates), Robert Landicho (Vinson & Elkins), Emma Johnson (Ashurst) and moderator Ciara Ros (Vinson & Elkins) held a lively discussion regarding the Energy Transition, followed by networking drinks, on July 14, 2022 in London.

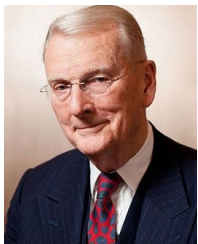


Moderator Robert Landicho (Vinson & Elkins) led an insightful "Ask the Arbitrator" session as part of Dubai Arbitration Week, with panelists Reshma Oogorah, international arbitrator and legal counsel, Jonathan Sutcliffe (K&L Gates) Ann Ryan Robertson (Locke Lord) and Rupert Choat KC (Atkin Chambers) on November 16, 2022.



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INSTITUTE FOR TRANSNATIONAL ARBITRATION EXPERTS...IN THE NEWS UPDATES



Charles Brower's professional memoirs, titled "Judging Iran," subtitled "A Memoir of The Hague, the White House, and Life on the Front Line of International Justice" will be published in April 2023. It can be pre-ordered on [Amazon](#) and will be available from other online booksellers once published. The Foreword is written by the current President of the International Court of Justice, Joan Donoghue, the third American (and the only woman of those three) to serve as President of the Court. Of the only five Americans ever to have been appointed as Judges *ad hoc* of the Court, Charles Brower is the most-appointed one, with three appointments (one by Colombia defending against Nicaragua and two by the United States defending against the Islamic Republic of Iran). Mr. Brower also served as Judge *ad hoc* of the Inter-American Court of Human Rights by appointment of Bolivia (1999-2002).

The ICC Mexico Committee has appointed **Orlando Cabrera** as a Delegate to the ICC Commission on Arbitration and ADR. The mission of the Commission is "to gather expertise on arbitration and ADR across the ICC network to enable thought leadership, in line with the strategic objectives of ICC Dispute Resolution Services." The Commission is made up of over 1300 members from more than 100 countries.



John Gaffney has been appointed to the List of Candidates Suitable for Appointment as Arbitrators under EU trade agreements and as a Member of the ICC Commission for Arbitration and ADR.

ITA Country Reporter for Turkey **Stephan Wilske** was a speaker at the Taipei International Arbitration Conference 2022 (October 5, 2022) where he and his colleague, Annemie Heubach, presented the following topic: "The Global Goals of ESG (Environmental, Social And Governance) – Are Arbitral Institutions Doing Their Part?" A paper with the same title will be published in Vol. 16/1 (May 2023) of the Contemporary Asia Arbitration Journal. He also co-edited and co-authored - together with Richard Happ – the book "ICSID Rules and Regulations - Article-by-Article Commentary" which was published on November 3, 2022.



ITA Country Reporter for the Netherlands **Richard Hansen** returned as a Managing Associate at Linklaters as of August 22, 2022. He is again part of the Amsterdam Arbitration Team within the firm's Dispute Resolution practice. Hansen has extensive experience acting as counsel in high-stakes commercial and investment arbitrations, as well as arbitration-related court proceedings in the Netherlands, such as enforcement and setting aside proceedings.



Les Schiefelbein is pleased to announce Claudia Salomon (President, ICC International Court of Arbitration) as the Keynote Speaker for the 5th Annual Schiefelbein Global Dispute Resolution Conference. The Conference will feature internationally recognized dispute resolution practitioners on four panels to discuss: Catastrophic Sovereign Events; Innovation in Investor-State Arbitration; Pharma & Life Sciences Disputes; and Nontraditional International Arbitration Claims. The Conference will be held on January 13, 2023 at the Sandra Day O'Connor College of Law, Arizona State University. You can register at the following link: <https://events.asucollegeoflaw.com/schiefelbein/>. The Conference is part of the Schiefelbein Global Dispute Resolution Program at the Sandra Day O'Connor College of Law. The Program also provides scholarships to law students who are interested in international law and international dispute resolution.

ITA Advisory Board Member **Mark Baker** has been recently reappointed as Chair of the Corporate Council at the International Institute for Conflict Prevention and Resolution (CPR) to a group of Fortune 100 companies. He is the first co-chair to be reappointed for a second term in CPR history. He has also been appointed to a second term as a board member of the Singapore International Arbitration Centre (SIAC).



ITA Advisory Board Member **Kevin O'Gorman** was named Head of International Arbitration, U.S. and Partner-in-Charge of Houston's 500-person office for Norton Rose Fulbright. He was also named to the Executive Committee of ITA as head of the MENA Task Force, appointed to the CPR Panel of Distinguished Neutrals, and appointed as a member of the ICC Commission on Arbitration and ADR.

ITA Advisory Board Member **Denton Nichols** was admitted as Partner in Norton Rose Fulbright's Houston office. He was also elected to the Board of Directors of the Houston International Arbitration Club for a term beginning in 2023 and was named as a 2022 "Rising Star" by The International Institute for Conflict Prevention and Resolution (CPR).



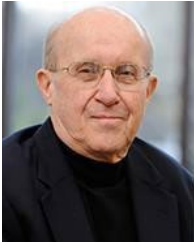
ITA Advisory Board Member **Katie Connolly** was promoted to Senior Associate in Norton Rose Fulbright's San Francisco office. She was also appointed to assistant editor for ITA in Review.

Judge **Mohamed Gomaa**, LL.M., of the Egyptian State Council Court of Appeal, Ph.D. level researcher of Public International Law at Hamburg University, and Founder and Board Member of "Energy Related Arbitration Practitioners" (ENERAP), was recently selected as a member of the European Legal Technology Association (ELTA), representing Egypt and the Middle East.



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Former ITA Chair, **Prof. Jeswald W. Salacuse's** recent article, "*Interstate Arbitration: ...Settling Disputes Which Diplomacy Has Failed to Settle,*" was published in the Spring 2022 issue of Negotiation Journal. Prof. Salacuse serves as Dean Emeritus and Distinguished Professor Emeritus at The Fletcher School of Law and Diplomacy.

Grant Hanessian of Hanessian ADR LLC has joined ITA as an Associate Member.



Sponsoring Member **Foley Hoag LLP** has designated **Christina L. Beharry** (Washington D.C.) as a member on the Advisory Board.

Professor Janet Walker of Sydney Arbitration Chambers has joined ITA as an Academic/ Government/Non-profit Member.



Professor Doug Jones of Sydney Arbitration Chambers has joined ITA as an Associate Member.

Supporting Member **TozziniFreire Advogados** has designated **Lucas Britto Mejias** (Sao Paulo) as their Advisory Board representative under 40.



Supporting Member **Latham & Watkins LLP** has designated **Santiago Bejarano Isaza** (New York) as their Advisory Board representative under 40.

Naimeh Masumy of the University of Basel has joined ITA as an Academic / Government / Non-profit Member.



Supporting Member **FTI Consulting, Inc.** has designated Managing Director **Yaoguo Lun** (Singapore) as an Advisory Board representative under 40.

Supporting Member **FTI Consulting, Inc.** has designated Senior Director **Jose Alzate** (London) as an Advisory Board representative under 40.



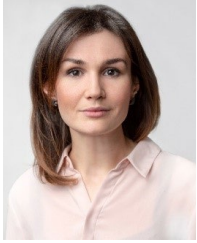
Supporting Member **FTI Consulting, Inc.** has designated Senior Managing Director **Karthik Balisagar** (London) as a member of the Advisory Board.

Supporting Member **FTI Consulting, Inc.** has designated Senior Managing Director **Stuart Amor** (London) as a member of the Advisory Board.



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Arbitrational Institute Member **Russian Institute of Modern Arbitration** has designated Executive Administrator **Yulia Mullina, MCI Arb** as a member on the Advisory Board.

Jessica Sblendorio of WilmerHale has joined ITA as an Associate Member.



Supporting Member **Creel, García-Cuéllar, Aiza Y Enríquez** has designated **Galo Martin Marquez Ruiz** as their Advisory Board representative under 40.

Supporting Member **Creel, García-Cuéllar, Aiza Y Enríquez** has designated **Luis Jardón** as a member of the Advisory Board.



Paul H. Cohen of 4-5 Gray's Inn Square has joined ITA as an Associate Member.

Anna Isernia Dahlgren of Larimer County District Court has joined ITA as an Assistant Editor of ITA in Review.



ITA Academic Council Chair **Professor Victoria Sahani** has accepted the position of Associate Provost for Community & Inclusion at Boston University. Professor Sahani comes to Boston University from Sandra Day O'Connor Law School at Arizona State University (ASU), where she served as a tenured professor since 2017 and a professor of law since 2019.



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ARBITRATION**



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A Division of THE CENTER FOR AMERICAN AND INTERNATIONAL LAW

SCOREBOARD
OF ADHERENCE TO TRANSNATIONAL ARBITRATION TREATIES
(as of December 31, 2022)

ABBREVIATIONS

NY United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (commonly, 1958 New York Convention)
ICSID Convention on the Settlement of Investment Disputes (1965)
IA Inter-American Convention on International Commercial Arbitration (commonly, Panama Convention) (1975)
USBIT United States Bilateral Investment Treaty
TIP US Treaties with Investment Protection Provisions
ECT Energy Charter Treaty (1998)
MC United Nations Convention on Transparency in Treaty-based Investor-State Arbitration (commonly, Mauritius Convention) (2017)

SYMBOLS

S Signed, but not ratified
R Ratified, acceded or succeeded
A Subscribed, but not signed, ratified or paid
(*) Capital-exporting country under MIGA
N/A Not applicable

CHANGES FROM PREVIOUS ISSUE

NY Democratic Republic of Congo (R); Suriname (R)
ICSID None.
IA None.
USBIT Updated.

ECT None.
MC None.

TIP None.

NATION	NY ¹	ICSID ²	ECT ³	IA	USBIT	TIP ⁴	MC
Afghanistan	R	R	R			R	
Albania	R	R	R		R		
Algeria	R	R				S	
Andorra	R						
Angola	R	R				S	
Antigua and Barbuda	R					R ²³	
Argentina	R	R		R	R	R	
Armenia	R	R	R		R	S	
Australia	R	R	S			R / S ¹⁹	R
Austria	R	R	R				
Azerbaijan	R	R	R		R		
Bahamas	R	R				R ²³	
Bahrain	R	R			R	R / S ²⁴	
Bangladesh	R	R			R		
Barbados	R	R				R ²³	
Belarus	R	R	S ²⁰		S		
Belgium	R	R	R				S
Belize	R	S				R ²³	R
Benin	R	R				S ²² / R ²⁹	R
Bhutan	R						
Bolivia ⁶	R			R		S ³¹	R
Bosnia and Herzegovina ⁷	R	R	R				
Botswana	R	R				R ²⁶	
Brazil	R			R		R	
Brunei Darussalam	R	R				R / R ²⁷ /S ¹⁹	
Bulgaria	R	R	R		R		
Burkina Faso	R	R				S ²² / R ²⁹	
Burundi	R	R				R ²⁵ / R ³⁰	
Cambodia	R	R				R / R ²⁷	
Cameroon	R	R			R		R
Canada	R	R				R ⁸ / S ¹⁹ /S ²¹	R

Cape Verde	R	R				S ²²	
Central African Republic	R	R					
Chad		R					
Chile	R	R		R		R / S ¹⁹	
China (People's Republic) ⁹	R	R					
Colombia	R	R		R		R / S ³¹	
Comoros	R	R				R ³⁰	
Congo	R	R			R		S
Congo (Democratic Republic of)	R	R			R	R ³⁰	
Cook Islands	R						
Costa Rica	R	R		R		R ¹⁰	
Côte d'Ivoire	R	R				S ²² / R ²⁹	
Croatia ⁷	R	R	R		R		
Cuba	R						
Cyprus	R	R	R				
Czech Republic	R	R	R		R		
Denmark ¹¹	R	R	R				
Djibouti	R	R				R ³⁰	
Dominica	R					R ²³	
Dominican Republic	R	S		R		R ¹⁰	
Ecuador	R	R		R		S ³¹	
Egypt	R	R			R	R / R ³⁰	
El Salvador	R	R		R	S	R ¹⁰	
Equatorial Guinea							
Eritrea						R ³⁰	
Estonia	R	R	R		R		
Eswatini		R				R ²⁶ / R ³⁰	
Ethiopia	R	S				R ³⁰	
Fiji	R	R					
Finland	R	R	R				S
France ¹²	R	R	R				S
Gabon	R	R					S
Gambia		R				S ²²	R
Georgia	R	R	R		R	R	
Germany	R	R	R				S
Ghana	R	R				R / S ²²	
Greece	R	R	R				
Grenada		R			R	R ²³	
Guatemala	R	R		R		R ¹⁰	
Guinea	R	R				S ²²	
Guinea-Bissau		S				S ²² / R ²⁹	
Guyana	R	R				R ²³	
Haiti	R	R			S	R ²³	
Holy See (Vatican City)	R						
Honduras	R	R		R	R	R ¹⁰	
Hungary	R	R	R				
Iceland	R	R	R			S	
India	R						
Indonesia	R	R				R ²⁷	
Iran	R						
Iraq	A	R				S	R
Ireland	R	R	R				
Israel	R	R				R	
Italy	R	R					S
Jamaica	R	R			R	R ²³	
Japan	R	R	R			S ¹⁹	
Jordan	R	R	R		R	R	
Kazakhstan	R	R	R		R	R ²⁸	
Kenya	R	R				R ²⁵ / R ³⁰	

Kiribati							
Korea (Republic) (South)	R	R				R	
Kosovo		R					
Kuwait	R	R				S / S ²⁴	
Kyrgyzstan	R	R	R		R	R ²⁸	
Lao People's Democratic Republic	R					R / R ²⁷	
Latvia	R	R	R		R		
Lebanon	R	R				S	
Lesotho	R	R				R ²⁶	
Liberia	R	R				R/S ²²	
Libyan Arab Jamahiriya						S / R ³⁰	
Liechtenstein	R		R				
Lithuania	R	R	R		R		
Luxembourg	R	R	R				S
Madagascar	R	R				R ³⁰	S
Malawi	R	R				R ³⁰	
Malaysia	R	R				R / R ²⁷ / S ¹⁹	
Maldives	R					R	
Mali	R	R				S ²² / R ²⁹	
Malta	R	R	R				
Marshall Islands	R						
Mauritania	R	R					
Mauritius	R	R				R / R ³⁰	R
Mexico	R	R		R		R ⁸ /S ¹⁹ /S ²¹	
Micronesia		R					
Moldova	R	R	R		R		
Monaco	R						
Mongolia	R	R	R		R	R	
Montenegro	R	R	R				
Morocco	R	R			R	R	
Mozambique	R	R			R	R	
Myanmar (Burma)	R					S / R ²⁷	
Namibia		S				R ²⁶	
Nauru		R					
Nepal	R	R					
Netherlands ¹³	R	R	R				S
New Zealand ¹⁴	R	R				R / S ¹⁹	
Nicaragua	R	R		R	S	R ¹⁰	
Niger	R	R				S ²² / R ²⁹	
Nigeria	R	R				R	
North Macedonia ⁷	R	R	R				
Norway	R	R	S				
Oman	R	R				R / S ²⁴	
Pakistan	R	R					
Palau	R						
Panama	R	R		R	R	R	
Papua New Guinea	R	R					
Paraguay	R	R		R		S	
Peru	R	R		R		R / R ¹⁸ /S ¹⁹ / S ³¹	
Philippines	R	R					
Poland	R		R		R	R ²⁷	
Portugal	R	R	R				
Qatar	R	R				S / S ²⁴	
Romania	R	R	R		R		
Russian Federation	R	S	S		S		
Rwanda	R	R			R	R / R ²⁵	
Saint Kitts and Nevis		R				R ²³	
Saint Lucia		R				R ²³	
St. Vincent and the Grenadines	R	R				R ²³	

Samoa		R					
San Marino	R	R					
Sao Tome and Principe	R	R					
Saudi Arabia	R	R				R / S ²⁴	
Senegal	R	R		R		S ²² / R ²⁹	
Serbia ⁷	R	R					
Seychelles	R	R				R ³⁰	
Sierra Leone	R	R				S ²²	
Singapore	R	R				R / R ²⁷	
Slovakia	R	R	R		R		
Slovenia ⁷	R	R	R				
Solomon Islands		R					
Somalia		R				R ³⁰	
South Africa	R					R / R ²⁶	
South Sudan		R				R ²⁵	
Spain	R	R	R				
Sri Lanka	R	R			R	R	
Sudan	R	R				R ³⁰	
Suriname	R					R ²³	
Sweden	R	R	R				S
Switzerland	R	R	R			R	R
Syrian Arab Republic	R	R					S
Taiwan							
Tajikistan	R		R			R ²⁸	
Tanzania	R	R				R ²⁵	
Thailand	R	S				R / R ²⁷	
Timor Leste		R					
Togo		R				S ²² / R ²⁹	
Tonga	R	R					
Trinidad and Tobago	R	R			R	R ²³	
Tunisia	R	R			R	R ³⁰	
Turkey	R	R	R		R	S	
Turkmenistan	R	R	R			R ²⁸	
Tuvalu							
Uganda	R	R				R ²⁵ / R ³⁰	
Ukraine	R	R	R		R	S	
United Arab Emirates	R	R				S / S ²⁴	
United Kingdom ¹⁵	R	R	R				S
United States of America ¹⁶	R	R		R	N/A	N/A	S
Uruguay	R	R		R	R	R	
Uzbekistan	R	R	R		S	R ²⁸	
Vanuatu							
Venezuela	R			R			
Vietnam	R					R / S ¹⁹ / R ²⁷	
West Bank and Gaza ¹⁷	R						
Yemen		R	R			R	
Zambia	R	R				R ³⁰	
Zimbabwe	R	R				R ³⁰	

Notes: (1) Extends to metropolitan and overseas constituent territorial subdivisions but not to overseas dependent territories. Consult UNCITRAL for definitive status, as well as for the reservations to the Convention. (2) Extends to metropolitan and overseas constituent territorial subdivisions and to overseas dependent territories unless specifically excluded. (3) 1991 European Energy Charter was signed by the US. European Union and EURATOM have ratified the ECT. (4) Treaties signed or ratified by the US with provisions on investments. (5) See also 2014 UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration. (6) ICSID Convention entered into force for Bolivia on July 23, 1995. On May 2, 2007, Bolivia denounced the ICSID Convention, with effect on November 3, 2007. The Government of Bolivia delivered notice to the United States on June 10, 2011, that it was terminating the "Treaty Between the Government of the United States of America and the Government of the Republic of Bolivia Concerning the Encouragement and Reciprocal Protection of Investment." As of June 10, 2012 (the date of termination), the treaty ceases to have effect, except that it continues to apply for another 10 years to covered investments existing at the time of termination. (7) As of 4 February 2003, The Federal Republic of Yugoslavia has changed its name to "Serbia and Montenegro." Montenegro declared itself independent from Serbia on June 3, 2006. Bosnia & Herzegovina, Croatia, the Former Yugoslav Republic of Macedonia, and Slovenia are separated successor states to parts of the former Yugoslavia and have succeeded to the NY. The Former Yugoslav Republic of Macedonia changed its name to the Republic of North Macedonia on 12 February 2019. (8) Included in the North American Free Trade Agreement among the United States, Canada and Mexico. (9) NY: includes Hong Kong Special Administrative Region. (10) Included in the Dominican Republic - Central America - United States Free Trade Agreement. (11) NY: includes Faeroe Islands and Greenland. (12) NY: includes, inter alia, French Guiana, French Polynesia, Guadeloupe, Martinique, Mayotte, New Caledonia, Réunion, and St. Pierre and Miquelon. (13) NY: includes Aruba and Netherlands Antilles. (14) ICSID Convention: excludes Cook Islands, Niue and Tokelau. (15) NY: includes Bermuda, Cayman Islands, Gibraltar, Guernsey, Isle of Man, and British Virgin Islands. ICSID Convention: excludes British Indian Ocean Territory,

Pitcairn Islands, British Antarctic Territory and Sovereign Base Areas of Cyprus. ICSID Convention: continues to include Hong Kong Special Administrative Region. (16) NY: includes, inter alia, American Samoa, Guam, Northern Mariana Islands, Puerto Rico and US Virgin Islands. (17) West Bank and Gaza are not recognized as states by the United States. (18) United States - Peru Trade Promotion Agreement. (19) Trans-Pacific Partnership signed on February 4, 2016. (20) The State has signed the ECT and it applies it provisionally, under Art. 45 of the ECT. (21) USMCA signed on November 30, 2018. (22) Economic Community of West African States (ECOWAS) – US Trade and Investment Framework Agreement ("TIFA") signed on August 5, 2014. (23) Caribbean Community (CARICOM) – US TIFA, in force on May 28, 2013. (24) Gulf Cooperation Council – US Framework Agreement signed on September 25, 2012. (25) East African Community – US TIFA, entered into force on July 16, 2008. (26) Southern African Customs Union – US TIFA, entered into force on July 16, 2008. (27) Association of South-East Asian Nations (ASEAN) – US TIFA, entered into force on August 25, 2006. (28) Central Asia – US TIFA, entered into force on June 1, 2004. (29) West African Economic and Monetary Union (WAEMU) – US TIFA, entered into force on April 24, 2002. (30) Common Market for Eastern and Southern Africa (COMESA) – US TIFA, entered into force on October 29, 2001. (31) Andean Community (ANCOM) – US Trade and Investment Council signed on October 30, 1998. SOURCES:

This issue was compiled by Co-Editors Crina Baltag and Monique Sasson of The Institute for Transnational Arbitration based on the following sources: United Nations; ICSID; UNCITRAL; Organization of American States; Energy Charter Secretariat; UNCTAD and the Office of the United States Trade Representative. The Scoreboard is designed to be a convenient reference and it is not intended to be relied on as legal advice. Please consult the sources directly to confirm the status of any particular ratifications, reservations, changes, special conditions or new developments. Copyright 2022, The Center for American and International Law.

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ITA PROGRAMS *at a glance*

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2023

JAN 19-20	<p>11th ITA-IEL-ICC Joint Conference on International Energy Arbitration – Houston HOUSTON</p> <p><i>Presented by</i> The Institute for Transnational Arbitration and The Institute for Energy Law of The Center for American and International Law and The ICC International Court of Arbitration</p> <p>Conference Co-Chairs: Cecilia Azar (Galicia Abogados, Mexico City), Teresa Garcia-Reyes (Vice President - Litigation, Baker Hughes, Houston) and Liz Snodgrass (Three Crowns, Washington D.C.)</p>
MAR 8-9	<p>ITA Conference on International Arbitration in the Mining Sector TORONTO</p> <p>Conference Co-Chairs: Nigel A. Blackaby (Co-Head International Arbitration, Freshfields Bruckhaus Deringer US LLP, Washington, D.C.), Kathryn Khamsi (Three Crowns LLP, Paris) and Myriam M. Seers (Savoie Laporte LLP, Toronto)</p>
MAR 29	<p>20th ITA-ASIL Conference: Reforming Arbitration Reform: Emerging Voices, New Strategies, Evolving Values WASHINGTON, D.C.</p> <p>Conference Co-Chairs: Dr. Crina Baltag (Associate Professor, Stockholm University, Stockholm) and Prof. Mark Feldman (Peking University, School of Transnational Law, Shenzhen)</p>
JUN 14-16	<p>35th ITA Workshop and Annual Meeting AUSTIN</p> <p>Workshop Co-Chairs: Dr. Diane A. Desierto (University of Notre Dame Law School, Notre Dame), Rachael Kent (WilmerHale, Washington D.C.) and Thomas Voisin (Quinn Emanuel Urquhart & Sullivan, LLP, Paris)</p>
TBA	<p>16th ITA Americas Workshop</p>



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