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Institute for  
**TRANSNATIONAL  
ARBITRATION**



Centro de Mediación y Arbitraje

**CANACO**

# 10th Annual Americas Workshop

## Underlying Corruption Issues in International Arbitration How Can the Arbitral Process Be Used to Fight Corruption?

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## 10th Annual Americas Workshop Underlying Corruption Issues in International Arbitration

**November 30 - December 1, 2015**

JW Marriott Hotel Mexico City  
Mexico City • Mexico



ITA is an Institute of  
**THE CENTER FOR AMERICAN  
AND INTERNATIONAL LAW**

### Highlights

- Keynote: **Brooks Hickman**, Anti-Corruption Division, Organisation for Economic Co-operation and Development (OECD), Paris
- Luncheon Address: **The Hon. Bernardo Sepúlveda Amor**, Of counsel at Creel, García-Cuellar, Aiza y Enriquez, S.C., Immediate Past Vice President of the International Court of Justice, Former Secretary of Foreign Affairs of Mexico
- Young Lawyers Roundtable, Welcome Reception and Workshop Dinner
- The program will be presented with simultaneous translation in English and Spanish

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**Conference Co-Chairs**

**Cecilia Flores Rueda**  
 Basham, Ringe y Correa S.C.  
 Mexico City

**Claus von Wobeser**  
 Von Wobeser y Sierra  
 Mexico City

What is the role of international tribunals in fighting corruption?

Ever since Judge Lagergren stated that corruption is an “international evil”, “contrary to good morals and to an international public policy common to the community of nations”, the anti-corruption movement has gained front row in the international agenda and a wide range of initiatives have been implemented to outlaw corruption on both the national and international level. Our keynote introduction speaker OECD Legal Director, Nicola Bonucci, will start the conference giving a significant overview of the multilateral legal framework of instruments that establishes an international rule of law on corruption.

Those charged with administering justice at the state level, have the responsibility of ensuring that such instruments are applied properly. This raises the question of where that leaves arbitrators. There are two possible avenues. Considering arbitrators as responsible to ensure compliance with the law or as mere adjudicators of a certain dispute. This conference will present and examine the view that arbitration practitioners have an ethical duty to find viable and effective means to fight corruption when there is evidence of such conduct in arbitration proceedings.

It has further been questioned whether arbitral tribunals and counsel are properly equipped to address the issue of corruption, both in regards to expertise and the tools at their disposal. This conference will review how arbitrators are tackling corruption and analyze the tools at the disposal of commercial and investment arbitration tribunals to deal with allegations and findings of corruption.

Indeed, arbitrators confronted with allegations of corruption are faced with difficult decisions, particularly when evaluating proof. The panelists will identify the relevant factors which tribunals have taken into consideration when assessing and weighing evidence of corruption. Moreover, luncheon address Bernardo Sepúlveda, former Vice President of the International Court of Justice, will reflect on his experience in evaluating evidentiary proof before the International Court of Justice and arbitration tribunals, a theme central to fighting corruption.

The conference will also focus on investment arbitration, where allegations of corruption have increased in the past years and are being used by States as a defense against investor’s claims. This is particularly relevant, because when corruption involves public infrastructure projects and public contracts, it is the population that will be ultimately affected.

Finally, with regards to enforcement one cannot envision international arbitrators fighting corruption without the support of national courts, which may be called upon to set aside awards involving corruption issues or to review those failing to address corrupt practices. What is the balance between the finality of arbitral awards and public policy concerns? What should be the standard of review?

To fight corruption we must first recognize it and recognize it is contrary to the rule of law and we must be aware and knowledgeable of the tools at our disposal to do so benefiting from the experience of those who have seen it in practice. We invite you to hear our experts in the field.

The program brings together leading arbitration specialists from around the world, assuring cross-cultural perspectives on these important issues. The audience will have an opportunity to ask questions of these experts.

The program will be presented with simultaneous translation in English and Spanish.



2013 Americas Workshop in São Paulo

*“The content, faculty and overall Workshop quality was excellent.”*

*“Serious content mixed with humor.”*

— Past Participants

15:00 REGISTRATION

16:00 WELCOME TO THE AMERICAS WORKSHOP

- Abby Cohen Smutny, ITA Chair, White & Case, Washington, D.C.
- Cecilia Flores Rueda, CANACO Chair, Basham, Ringe y Correa S.C., Mexico City

## AMERICAS ROUNDTABLE FOR YOUNG LAWYERS

*Presented by*

ITA Young Arbitrators Initiative Committee  
 Foro de Jóvenes en Arbitraje CAM-CANACO

16:10 WELCOME TO THE ROUNDTABLE

- Montserrat Manzano, ITA Young Arbitrators Initiative Committee Chair, Von Wobeser y Sierra, S.C., Mexico City
- Alejandro Flores Patiño, CANACO-CAM Foro de Jóvenes en Arbitraje Chair, Loperena, Lerch & Martín Del Campo, Mexico City

16:20 HOW TO ADVANCE A CAREER AS A YOUNG INTERNATIONAL ARBITRATOR

This session aims to provide practical advice on how to gain access and advance a career in international arbitration. The panel will comment on the issues a young practitioner has to face in order to access the world of international arbitration as an arbitrator. Our panelists will share their experience on how they overcame the barrier of their first appointment and other essential professional aspects every young practitioner must know.

MODERATOR:

- Montserrat Manzano, ITA Young Arbitrators Initiative Committee Chair, Von Wobeser y Sierra, S.C., Mexico City

PANELISTS:

- Cecilia Azar, DLA Piper, Gallastegui y Lozano, México City
- Rocío Digon, Managing Director and Counsel, SICANA Inc., ICC International Court of Arbitration, New York
- Abby Cohen Smutny, ITA Chair, White & Case, Washington, D.C.
- Ricardo Izeta, Head of the legal department on the Thermoelectric Projects Coordination, Federal Electricity Commission (CFE), Mexico City

17:30 COFFEE BREAK

17:50 COUNSEL'S ETHICAL OBLIGATIONS IN INTERNATIONAL ARBITRATION -- DIFFERING NORMS AND EXPECTATIONS ON THE PRODUCTION OF EVIDENCE FOR PARTY REPRESENTATIVES

This panel will initiate a debate on the conduct of counsel and their ethical obligations, based on the following hypothetical questions: A party representative is aware that there is an incriminating piece of evidence in its client's records. As counsel to this party what would you do? Is the lawyer's duty first to protecting the interests of his/her client or to the arbitral tribunal and the arbitral process – even if it incriminates its client. Is there a different approach that would be taken depending if the representative is Latin American or a common law practitioner? Our panelists will comment on how the IBA Guidelines on Party Representation in International Arbitration have been used in the region and any relevant issues or trends which have arisen since their adoption.

MODERATOR:

- Alejandro Flores Patiño, Loperena Lerch Martín del Campo, Mexico City

PANELISTS:

- Eliana Baraldi, De Vivo, Whitaker e Castro Advogados, São Paulo
- Julieta Ovalle Piedra, Bufete Ovalle Favela, S.C., Mexico City
- Rafael Rincón, Gómez-Pinzón Zuleta Abogados, S.A., Bogotá
- Timothy J. Sullivan, King & Spalding, Washington, D.C.

19:00

WELCOME RECEPTION  
JW Marriott Hotel

# SCHEDULE

# December 1

7:45 ITA AMERICAS INITIATIVE COMMITTEE MEETING

9:00 WELCOME AND INTRODUCTION TO THE WORKSHOP

— **Claus von Wobeser**, Workshop Co-Chair, Von Wobeser y Sierra, S.C., Mexico City

9:10 KEYNOTE ADDRESS: THE INTERNATIONAL FRAMEWORK OF THE FIGHT AGAINST CORRUPTION

Our keynote speaker will give an overview of the significant multilateral legal framework and instruments that establish an international rule of law on corruption. Focusing on particular efforts and the regulatory framework carried out by the OECD (OECD Anti-Bribery Convention, OECD Working Group on Bribery, OECD Bribery Report), he will address the definition of “foreign bribery” and the anatomy of a corrupt transaction and explain basic elements in order to inform our discussions later in the day.

INTRODUCTION:

— **Elisabeth Eljuri**, ITA Americas Initiative Chair, Norton Rose Fulbright, Caracas

KEYNOTE SPEAKER:

— **Brooks Hickman**, Anti-Corruption Division, Organisation for Economic Co-operation and Development (OECD), Paris

9:45 WHICH TOOLS ARE AVAILABLE TO A TRIBUNAL IN A COMMERCIAL ARBITRATION TO DEAL WITH A FINDING OF CORRUPTION?

This panel will approach from a practical standpoint the questions that every arbitrator is faced with when an allegation of corruption is brought forward by a party. How do arbitrators assess the validity of this allegations? Should the tribunal dismiss the claims? Is it appropriate for the tribunal to annul the agreement? How does the tribunal apply local law vs international law in assessing the standard for corruption? Is the use of red flags to detect corruption in contracts a useful tool? What is the extent of the duties and powers of arbitrators to deal with suspicions of corruption, should the tribunal report corrupt allegations to national authorities? Which are the remedies and sanctions which may be granted by the tribunal?

MODERATOR:

— **Christian Albanesi**, Linklaters, Paris

PANELISTS:

— **Sam Eastwood**, Partner & Head of Business Ethics & Anti-corruption, Norton Rose Fulbright, London

— **Ian Meredith**, K&L Gates, London

10:50 COFFEE BREAK

11:10 HOW TO DEAL WITH CORRUPTION ALLEGATIONS IN INVESTMENT ARBITRATION

Allegations of corruption have increased in investment arbitration in the past years and are being used by States as a defense against investor’s claims. Also in some cases Claimant may want to prove the existence of corruption when it has prevented its access to the investment. This panel will analyze how corruption issues arise and what investment tribunals have done or may do in the future to address corruption allegations. Our renowned panelists will also comment on several other complex issues arising from allegations of corruption, such as: How do violations of domestic laws on corruption impact the outcome of international arbitration? Is dealing with corruption a matter of jurisdiction, admissibility or the merits? How should we deal with state responsibility for corruption and the attribution asymmetry in international investment arbitration?

MODERATOR:

— **Klaus Reichert SC**, Brick Court Chambers, London

PANELISTS:

— **Gabriela Alvarez-Avila**, Curtis, Mallet-Prevost, Colt & Mosle LLP, Mexico City

PANELISTS (CON.):

- **Aloysius Llamzon**, King & Spalding, New York
- **Alexander Yanos**, Hughes Hubbard & Reed LLP, New York

**12:15 ENFORCEMENT OF AN ARBITRAL AWARD IN WHICH THERE ARE UNDERLYING ISSUES OF CORRUPTION**

Where the tribunal has decided a case and underlying issues of corruption have not been dealt with or were dealt with unsatisfactorily, a party opposing enforcement may seek the annulment of the award based on a violation of public policy. This raises important questions for a judge receiving the application. What is the balance between the finality of arbitral awards and public policy concerns? What should be the standard of review?

MODERATOR:

- **David M. Orta**, Quinn Emanuel Urquhart & Sullivan, LLP, Washington, D.C.

PANELISTS:

- **Carlos Loperena**, Loperena, Lerch & Martín Del Campo, Mexico City
- **Hansel T. Pham**, White & Case LLP, Washington, D.C.

13:20



LUNCHEON AND LUNCHEON ADDRESS

Reflecting on Evidentiary Proof

**The Honorable Bernardo Sepúlveda Amor**  
 Of counsel at Creel, García-Cuellar, Aiza y Enriquez, S.C.  
 Immediate Past Vice President of the International Court of Justice  
 Former Secretary of Foreign Relations of Mexico

**15:20 PROVING CORRUPTION, WHAT SHOULD BE THE APPLICABLE STANDARD?**

This panel will comment on the relevant factors which tribunals have taken into consideration when assessing and weighing evidence of corruption. Is there a procedural consensus on how to deal with corruption allegations in international arbitration? What ethical issues may arise and how may counsel deal with them?

MODERATOR:

- **Lucinda A. Low**, Steptoe & Johnson LLP, Washington D.C.

PANELISTS:

- **Christa Mueller**, Noriega + Escobedo, Mexico City
- **Joe Tirado**, Global Co-Chair of International Arbitration, Winston & Strawn London LLP, London
- **Marc Veit**, LALIVE, Zurich

**16:30 COFFEE BREAK**

**16:50 AMERICAS FORUM**

The Americas Forum is an open informal discussion providing the opportunity for arbitrators, arbitration counsel and in-house counsel to share experiences and raise concerns in transnational arbitration in an off-the-record unstructured dialogue format. The agenda for the Forum is determined by the participants, by pre-submitted questions and topics and by spontaneous remarks at the event. Registrants will receive instructions on how to submit questions or topics for discussion at the Forum.

MODERATORS:

- **Cecilia Flores Rueda**, CANACO Chair, Basham, Ringe y Correa S.C., Mexico City
- **Claus von Wobeser**, Workshop Co-Chair, Von Wobeser y Sierra, S.C., Mexico City

**18:00 ADJOURN**

**19:00 AMERICAS WORKSHOP DINNER (OPTIONAL)**



**CLUB DE INDUSTRIALES**

*(Please indicate on the registration form if you wish to attend.  
 Ticket price: \$100 per person).*

# REGISTRATION

## 10th Annual Americas Workshop Underlying Corruption Issues in International Arbitration

November 30 - December 1, 2015  
JW Marriott Hotel Mexico City • Mexico City

Registration includes the two-day Workshop, course materials, Welcome Reception and Workshop Luncheon. Please note the program will be presented with simultaneous translation in English and Spanish. Separate registration is required for the Workshop Dinner.

ITA Advisory Board members who did not attend the 2015 Dallas Workshop for free are entitled to register for this Americas Workshop tuition-free. To register at no cost, please contact Krishonne Johnson at [kjohnson@cailaw.org](mailto:kjohnson@cailaw.org) or +1 972-244-3414.

To register at the Member rate, you must be a member of one or more of the following organizations: ITA, CANACO, BMA, CAM, Comité 2022, ICC, ICDR, IMA, CAIL/SWIICL or Academy Alumni. Please enter all of your pertinent memberships below.

	Received by 10/30/15	Received by 10/30/15
<b>Americas Workshop (Nov 30-Dec 1)</b>		
<input type="checkbox"/> Member	345 USD (aprox. 5,500 MXP)	395 USD (aprox. 6,300 MXP)
<input type="checkbox"/> Non-Member	425 USD (aprox. 6,800 MXP)	485 USD (aprox. 7,750 MXP)
<input type="checkbox"/> Government/Non-Profit/ Academic/Corporate Counsel	245 USD (aprox. 4,000 MXP)	295 USD (aprox. 4,750 MXP)
<input type="checkbox"/> Student	125 USD (aprox. 2,000 MXP)	150 USD (aprox. 2,400 MXP)
<b>Young Lawyers Roundtable &amp; Welcome Reception ONLY (Nov 30 only)</b>		
<input type="checkbox"/> Member	100 USD (aprox. 1,600 MXP)	125 USD (aprox. 2,000 MXP)
<input type="checkbox"/> Non-Member	125 USD (aprox. 2,000 MXP)	150 USD (aprox. 2,400 MXP)
<input type="checkbox"/> Government/Non-Profit/ Academic/Corporate Counsel	100 USD (aprox. 1,600 MXP)	125 USD (aprox. 2,000 MXP)
<input type="checkbox"/> Student	100 USD (aprox. 1,600 MXP)	125 USD (aprox. 2,000 MXP)
<b>Americas Workshop Dinner (Dec 1)</b>		
<input type="checkbox"/> I will attend the Workshop Dinner at the Club de Industriales	100 USD (aprox. 1,600 MXP)	100 USD (aprox. 1,600 MXP)
<input type="checkbox"/> I wish to bring a guest to the Workshop Dinner*	100 USD (aprox. 1,600 MXP)	100 USD (aprox. 1,600 MXP)

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### BANK TRANSFER

Send your completed registration form together with a copy of your bank transfer details via email to [ita@cailaw.org](mailto:ita@cailaw.org) or fax them to +1 972.244.3401.

PAYMENT MUST ACCOMPANY REGISTRATION

## GENERAL INFORMATION

**CANCELLATION POLICY:** Tuition, less a \$50 cancellation fee will be refunded upon receipt of written cancellation received by October 30, 2015. E-mail cancellation notice to [Igaspar@cailaw.org](mailto:Igaspar@cailaw.org). After this date, no refunds, but substitution of attendees for this program will be permitted. Registrants not entitled to a refund will receive the course materials.

**HOTEL:** The cost of housing is not included in tuition. However, rooms (in limited number) have been reserved at the JW Marriott Hotel Mexico City, Andres Bello 29, Mexico City, D.F. 11560, Mexico. Registrants should make your reservations directly with the hotel: (a) online at [cailaw.org/ita](http://cailaw.org/ita); or (b) by phone at (52 55) 5999 0126. Please advise the hotel that you are attending the "Seminario ITA-CANACO" to receive a special reduced rate of \$259 + tax USD per night. The deadline to obtain this special rate is November 13, 2015. As a limited number of rooms have been blocked at the hotel, availability cannot be guaranteed once the room block is full so make your reservations early.

**MCLE/CPD CREDIT:** The Americas Workshop is approved by the State Bar of Texas for a total of 8.5 hours, including 1.25 hour of ethics. Course ID Number: 901328009. For this conference, ITA will directly apply (if requested) for course accreditation in the following states: California, Minnesota, New Mexico, Ohio, Oklahoma, Pennsylvania, Texas and Virginia. Some of these states may not approve a program for credit hours before the program occurs. Attorneys may be eligible to receive CLE credit through reciprocity or attorney self-submission in other states. ITA conferences are typically accredited by all mandatory CLE states.

# REGISTRATION (CON.)

*\* Please complete the following guest information (if applicable):*

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Swift #: BRBTUS33

Please reference "10th Annual Americas Workshop", your company and your name to ensure proper registration.

Please ensure that a copy of the bank transfer details is attached to your registration form.

Send the completed registration form together with a copy of your bank transfer details to [ita@cailaw.org](mailto:ita@cailaw.org) or fax them to +1 972.244.3401.

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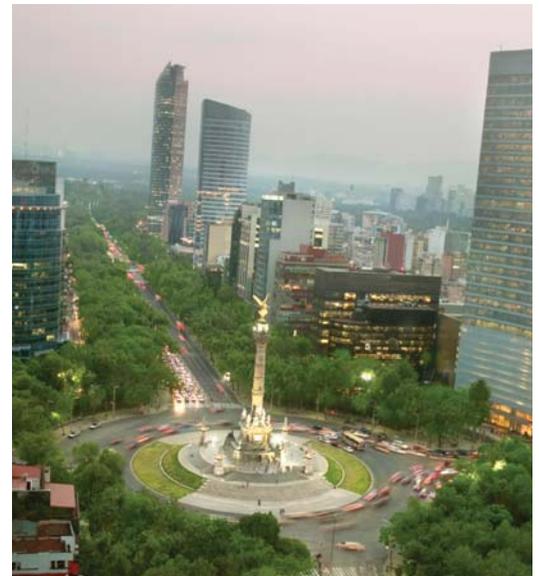
### ONLINE

Credit card only  
[www.cailaw.org/ita](http://www.cailaw.org/ita)

### BANK TRANSFER

Send your completed registration form together with a copy of your bank transfer details via email to [ita@cailaw.org](mailto:ita@cailaw.org) or fax them to +1 972.244.3401.

PAYMENT MUST ACCOMPANY REGISTRATION



FOR MORE INFORMATION, VISIT:

[cailaw.org/ita](http://cailaw.org/ita) (ITA)

OR

[arbitrajecanaco.com.mx](http://arbitrajecanaco.com.mx) (CANACO)