



Institute for
**TRANSNATIONAL
ARBITRATION**

28th Annual ITA Workshop

**When Justice Delayed Would Be Justice Denied:
Emergency Arbitrators and Interim Measures in International Arbitration**



28th Annual ITA Workshop Emergency Arbitrators and Interim Measures in International Arbitration

June 15 - 17, 2016

Westin Galleria Hotel • Dallas, Texas

Register Now!

cailaw.org/ita-wkshp

Highlights

- | The #1 US international arbitration conference
- | Mock scenes: the Interim Measures Hearing
- | Expert panels on recent developments and current issues
- | Oral History Interview with **Albert Jan van den Berg**, Past President, ICCA and **Meg Kinnear**, Secretary General, ICSID
- | Young Arbitrators Dallas Roundtable – Managing Risks and Controlling Costs
- | Approved by the State Bar of Texas for 8 hours of MCLE credit, including 0.5 hour of ethics
- | Workshop Dinner at the Petroleum Club of Dallas
- | Join ITA and attend the Workshop and all membership activities for free, including the ITA Forum and the Advisory Board Annual Dinner



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

Workshop Co-Chairs

Shahla Ali
University of Hong Kong
Hong Kong

David Brynmor Thomas
39 Essex Chambers
London

Jennifer Kirby
Kirby
Paris

Introduction

Is your adversary about to destroy evidence? Or secrete assets?

Is your joint venture partner about to hold a board or shareholders meeting without you?

Has a state forced you off a construction site at gunpoint and wrongfully imprisoned your CEO?

Sometimes parties need help and fast. Over the past decade, the availability of interim relief in international arbitration has expanded to meet their needs. UNCITRAL has revised its Arbitration Rules and Model Law on International Commercial Arbitration to expressly empower arbitrators to issue interim measures and encourage national courts to enforce them. And arbitral institutions around the world have updated their rules to clarify the power of arbitrators to issue interim relief and provide for “emergency arbitrators” who can step in and grant interim measures even before an arbitral tribunal is constituted. In this year’s annual program, ITA will explore these important developments.

Through a series of panels and mock scenarios, international arbitration experts from around the world will discuss the types of interim relief parties most frequently seek and the standards arbitral tribunals apply in deciding whether or not that relief should be granted. They will also consider when a party might be better off seeking interim relief from a national court than an arbitrator and vice versa. In addition, practitioners from both common-law and civil-law countries will debate the special ethical issues counsel face when seeking interim measures, and address the peculiar challenges parties face in seeking interim measures against states.

The participants will also examine the extent to which national courts are willing to enforce arbitral awards granting interim measures under the New York Convention and the circumstances that make enforcement more or less likely.

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2015 ITA Workshop

“Fabulous conference. Far and away the most interesting arbitration conference I have ever attended.”

- 2015 Participant

3:00 REGISTRATION

3:30 WELCOME TO THE WORKSHOP

— **Abby Cohen Smutny**, Chair, ITA Advisory Board, White & Case, LLP, Washington, D.C.

YOUNG ARBITRATORS DALLAS ROUNDTABLE

Presented by the
ITA Young Arbitrators Initiative Committee

3:35 WELCOME TO THE ROUNDTABLE

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

Coffee Break Sponsors



3:40 HOW DO ARBITRATION COUNSEL AND IN-HOUSE COUNSEL ASSESS RISKS BEFORE PURSUING A CLAIM OR SETTLING A DISPUTE?

How to manage disputes and how to best manage them. Aside from the legal risks, the financial, business, and operational risks are usually assessed before initiating a claim in order to increase the likelihood of success. Our panelists will share the perspective of both in-house and outside counsel and comment on their experience in risk management and evaluating cases. Adequate risk assessment before pursuing or settling a claim translates into repeated resort by the business community to international arbitration as an efficient way to achieve their goals.

MODERATOR — **Montserrat Manzano**, Von Wobeser y Sierra, S.C., Mexico City

PANELISTS — **Santiago Dellepiane**, Compass Lexecon, New York

— **Elsa Ortega**, Ortega y Gómez Ruano, S.C, Mexico City

— **Teresa Garcia Reyes**, Senior Counsel - Litigation, GE Oil & Gas, Houston

4:25 BREAK

4:40 WHAT LITIGATION TOOLS CAN CORPORATIONS USE TO MANAGE RISKS AND CONTROL COSTS IN ARBITRATION?

How can third party funders and insurers assist counsel in evaluating and controlling financial risks of pursuing a claim? If a risk is insurable, a party may pursue third party funding to overcome liquidity issues or share that risk. This assessment before a case starts may help make resource allocation decisions (forecast costs, plan in case of a loss or diversify risk). Respondents may also seek to obtain After the Event Insurance to manage costs. This session will present the view of counsel, funder and client and give an overview of where arbitration financing is at the time.

MODERATOR — **Silvia Marchili**, ITA YAI Vice Chair, King & Spalding LLP, Houston

PANELISTS — **Maddi Azpiroz**, Managing Director, ClaimTrading Ltd, London

— **Alberto F. Ravell**, Senior Counsel, ConocoPhillips Company, Houston

— **Eugene J. Silva**, Counsel - International Disputes, Exxon Mobil Corporation, Houston

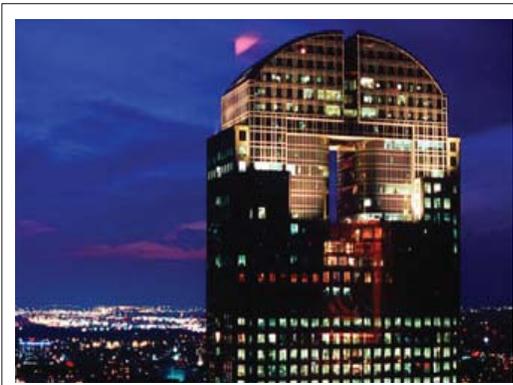
5:25 CLOSING REMARKS

5:30 WORKSHOP WELCOME RECEPTION

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Vinson&Elkins LLP

7:00 WORKSHOP DINNER (Optional)



SKY LOBBY, THE PETROLEUM CLUB OF DALLAS 40th Floor, JP Morgan Chase Tower Building

Please indicate on the registration form if you wish to attend.

Ticket price: \$110 per person.

Gather in Lobby by 6:40 for bus loading and departure. Buses will return to the hotel at the end of the evening.

Dress: Business or cocktail attire.

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WHITE & CASE

9:00 WELCOME BACK

— **Abby Cohen Smutny**, Chair, ITA Advisory Board, White & Case, Washington, D.C.

9:10 KEYNOTES: INTERIM MEASURES IN INTERNATIONAL ARBITRATION

The past decade has seen an expansion in the availability of interim measures in international arbitration. Our keynote speakers will discuss the origin, scope and implications of this change in terms of the power of arbitrators to issue interim measures, the advent of emergency arbitrators and the approach national courts take to the enforceability of arbitral awards granting interim measures. Their observations will frame the issues that will be examined in greater detail throughout the course of the day.

INTRODUCTION — **Prof. Shahla Ali**, Workshop Co-Chair

COMMENTARY: Interim Measures: The Slow Evolution Of Quick Arbitral Relief — **James Castello**, King & Spalding, Paris

COMMENTARY: Emergency Arbitration: Justice On The Run — **Prof. Patricia Shaughnessy**, University of Stockholm School of Law, Stockholm

9:55 MOCK: INTERIM MEASURES HEARING – PART 1

Cases where parties seek interim measures of protection commonly involve high-stakes situations where the decision on the interim measures application may well have profound implications for the way the rest of the case plays out. Such applications confront parties with special strategic considerations and frequently raise some of the most challenging issues arbitrators have to decide.

Through a mock interim measures hearing with parties, lawyers and arbitrators from diverse legal traditions, this session will give the audience a behind-the-scenes look at how parties bring and defend against applications for interim relief, as well as how arbitral tribunals approach such applications and take their decisions.

First, the parties meet with their counsel to strategize their respective approaches to the interim measures hearing. Second, the parties’ counsel make their arguments to the arbitral tribunal. Third, the arbitral tribunal deliberates, renders its decision and explains its reasoning.

Audience members will have an opportunity to vote on how they would have decided the interim measures application and explain the reasons for their agreement or disagreement with the arbitral tribunal in a post-decision discussion.

INTRODUCTION OF THE MOCK — **David Brynmor Thomas**, Workshop Co-Chair

SCENE 1: CLAIMANT’S CLIENT MEETING

Claimant’s Corporate Counsel.....**Tomasz J. Sikora**, Counsel, International Disputes Group
Exxon Mobil Corporation, Houston

Claimant’s Advocate (Common Law)**Hansel T. Pham**, White & Case LLP, Washington, D.C.

SCENE 2: RESPONDENT’S CLIENT MEETING

Respondent’s Corporate Counsel**Elizabeth Devaney**, Assistant General Counsel
Occidental Petroleum Corporation, Houston

Respondent’s Advocate (Civil Law)**Noradèle Radjai**, LALIVE, Geneva

SCENE 3: ARGUMENT BEFORE THE TRIBUNAL

Claimant’s Advocate (Common Law)**Hansel T. Pham**

Claimant’s Corporate Counsel.....**Tomasz J. Sikora**

Respondent’s Advocate (Civil Law).....**Noradèle Radjai**

Respondent’s Corporate Counsel.....**Elizabeth Devaney**

Chair, Arbitral Tribunal.....**John Beechey**, Arbitrator, London

Claimant-Appointed Arbitrator.....**Alejandro Ogarrío**, Ogarrío Daguerra, Mexico City

Respondent-Appointed Arbitrator.....**Dominique Brown-Berset**, Brown&Page, Geneva

AUDIENCE VOTE

10:45 BREAK

11:05 MOCK: INTERIM MEASURES HEARING - PART 2

The tribunal renders its decision and explains its reasoning in light of the applicable standards and whether or not those standards were satisfied. The results of the audience vote are revealed. The players share their reflections on the tribunal’s decision and the issues they found most challenging, and the audience is invited to join the discussion.

INTRODUCTION AND MODERATOR — David Brynmor Thomas, Workshop Co-Chair

SCENE 4: THE TRIBUNAL’S DECISION

Claimant’s Advocate (Common Law).....	Hansel T. Pham
Claimant’s Corporate Counsel.....	Tomasz J. Sikora
Respondent’s Advocate (Civil Law).....	Noradèle Radjai
Respondent’s Corporate Counsel.....	Elizabeth Devaney
Chair, Arbitral Tribunal.....	John Beechey
Claimant-Appointed Arbitrator.....	Alejandro Ogarrío
Respondent-Appointed Arbitrator.....	Dominique Brown-Berset

PANEL DISCUSSION AND AUDIENCE Q&A

11:40 FORMS OF INTERIM RELIEF

As parties seek interim measures to protect against a wide variety of threats, interim relief can take diverse forms. This panel of arbitration experts will discuss the types of interim measures that come up most frequently in international arbitration. It will also consider when a party might be better off seeking interim relief from a court than from an arbitrator and vice versa.

MODERATOR — Jennifer Kirby, Workshop Co-Chair

PANELISTS — John P. Bang, Bae, Kim & Lee, Seoul

— **Judge Faith Hochberg, Faith Hochberg ADR, New York**

— **Ank Santens, White & Case, New York**

Audience Q&A

12:25 LUNCHEON

A CONVERSATION WITH

Albert Jan van den Berg

Immediate Past President, International Council Commercial Arbitrators (ICCA)
Hanotiau & van den Berg, Brussels

With

Meg Kinnear

Secretary-General, International Centre for Settlement of Investment Disputes (ICSID)
Washington, D.C.

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2:15 ETHICAL OBLIGATION OR ETHICAL VIOLATION?

In certain circumstances, parties may seek interim relief on an ex parte basis. Such applications raise an ethical question for counsel: To what extent should counsel for the party making the application disclose facts unfavorable to her client’s application? A common-law lawyer and civil-law lawyer will debate this question in light of their respective legal traditions.

INTRODUCTION AND MODERATOR — David Brynmor Thomas, Workshop Co-Chair

PANELISTS — Natalie L. Reid, Debevoise & Plimpton, New York

— Roland Ziadé, Linklaters, Paris

2:45 INTERIM MEASURES AGAINST STATES

When parties seek interim measures against states, they often face special challenges. The types of relief parties seek against states can differ markedly from those they seek against private parties. Arbitrators may apply heightened standards when determining such applications. And a party's ability to enforce an interim measure against a state can be far more difficult. This panel of experienced, investment-arbitration practitioners will address these and other state-specific issues.

INTRODUCTION AND MODERATOR — Prof. Shahla Ali, Workshop Co-Chair

PANELISTS — Marinn Carlson, Sidley Austin, Washington, D.C.

— Eloïse Obadia, Special Legal Consultant, Derains & Gharavi PLLC, Washington, D.C.

— Anton A. Ware, Arnold & Porter, San Francisco

3:30 BREAK

3:50 INTERIM MEASURES IN PRACTICE: INSTITUTIONAL INSIGHTS

Through their administration of thousands of cases, arbitral institutions have a wealth of information about the growth of interim relief in international arbitration over the past decade. This panel of top institutional insiders from three continents will share their practical experience with emergency arbitrator proceedings and applications for interim relief to arbitral tribunals, as well as their systemic perspective on emerging trends.

INTRODUCTION AND MODERATOR — Jennifer Kirby, Workshop Co-Chair

PANELISTS — Steven K. Andersen, Vice President, International Development, International Centre for Dispute Resolution (ICDR), Midvale

— Chiann Bao, Secretary General, Hong Kong International Arbitration Center (HKIAC), Hong Kong

— Annette Magnusson, Secretary General, Arbitration Institute of the Stockholm Chamber of Commerce (SCC), Stockholm

Audience Q&A

4:35 ARE ARBITRAL DECISIONS GRANTING INTERIM MEASURES ENFORCEABLE?

This is the money question. When push comes to shove, an interim measure is only as good as it is enforceable. This panel of arbitration experts from a variety of jurisdictions will discuss the different approaches national courts take to the enforceability under the New York Convention of arbitral awards granting interim measures and the steps arbitrators can take to increase the chance that their award will be enforced.

INTRODUCTION AND MODERATOR — David Brynmor Thomas, Workshop Co-Chair

PANELISTS — Prof. Jack J. Coe, Jr., Pepperdine University School of Law, Malibu

— Honourable Edward C. Chiasson, Counsel, Borden Ladner Gervais LLP, Vancouver

— Andrés Jana, Bofill Mir & Álvarez Jana, Santiago, Chile

Audience Q&A

5:20 CONCLUDING REMARKS

— Abby Cohen Smutny

ABOUT THE INSTITUTE FOR TRANSNATIONAL ARBITRATION



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.

ITA MEMBERSHIP

JOIN ITA AND ATTEND FOR FREE

The best way to attend the Workshop is as a member of the ITA Advisory Board. All Advisory Board members are entitled to attend the entire Workshop for free (other than the ticketed Workshop dinner on Wednesday) PLUS the following membership activities FOR FREE:

Thursday, June 16

7:45 – 8:45 a.m.

ITA YOUNG ARBITRATORS INITIATIVE COMMITTEE ANNUAL MEETING

Young Arbitrators Initiative Committee Chair Montserrat Manzano presiding

The Young Arbitrators Initiative Committee and its annual meeting are open to all ITA Advisory Board members under the age of 40 and all ITA Young Arbitrator Members.

6:30 – 9:00 p.m.

ITA ADVISORY BOARD ANNUAL DINNER

ITA Advisory Board Chair Abby Cohen Smutny presiding

The annual reception and dinner meeting of the Advisory Board this year will be at the beautiful and historic Dallas Country Club following the conclusion of the Workshop. Advisory Board members and their spouse or guest are invited as guests of the Institute thanks to the generosity of our sponsors.

At the dinner, we will conduct just a little business, recognizing special contributors to the work of ITA this year.

Gather in Lobby by 6:10 for bus loading and departure. Buses will be available to transport us back to the hotel at the conclusion of the evening. Dress: Business or cocktail attire.

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KING & SPALDING

Friday, June 17

7:45 – 8:45 a.m.

ITA AMERICAS INITIATIVE COMMITTEE ANNUAL MEETING

Americas Initiative Committee Chair Elisabeth Eljuri presiding

The ITA Americas Initiative Committee and its annual meeting are open to all members of the ITA Advisory Board in, or interested in, Latin America.

9:00 a.m. – 12:00 p.m.

ITA FORUM

The annual ITA Forum is a special event for members of the Advisory Board, Academic Council, ITA Arbitration Report Board of Reporters, World Arbitration and Mediation Review Board of Editors, Young Arbitrator Members, ITAFOR Moderators and Contributors, and Workshop faculty members, providing an unscripted opportunity to discuss current issues and share concerns off-the-record with their peers in the field of transnational arbitration.

The agenda for this wide open discussion is determined by the participants, via topics and questions submitted in advance or raised at the Forum itself. To propose topics or questions in advance that you would like to have addressed at the Forum, please e-mail kjohnson@cailaw.org.

For a complete calendar of ITA programs and activities and for further membership information, visit www.cailaw.org/ita

4 WAYS TO APPLY

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All members (except Young Arbitrator Members) receive these benefits:

- One or more Advisory Board representatives
- Free attendance for each Advisory Board representative at the Annual Workshop in Dallas OR the Annual Americas Workshop in Latin America
- Free attendance for each Advisory Board representative and a guest at the Advisory Board's Annual Dinner
- Free attendance at the invitation-only ITA Forum
- Member discount at other ITA programs
- Free subscription to ITA's quarterly newsletter, *News and Notes*, with its *Scoreboard of Adherence to Transnational Arbitration Treaties*
- Opportunity to participate in the committees, leadership and other activities of the Advisory Board
- Recognition as an Advisory Board member in publications
- If qualified, inclusion on the IEL Energy Arbitrators List
- 20% discount on books published by Oxford University Press in collaboration with ITA

Associate Membership – \$725

(only open to individuals)

- Member is on the ITA Advisory Board
- One free subscription to *World Arbitration and Mediation Review (WAMR)*
- Recognition as an Associate Member in publications

Sponsoring Membership – \$1,250

(open to individuals, corporations, firms, and other organizations)

- One Advisory Board representative
- One free subscription to *World Arbitration and Mediation Review (WAMR)*
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(open to corporations, firms, and other organizations)

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- Recognition as a Supporting Member in publications

Sustaining Membership – \$6,000

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- The right to designate an unlimited number of additional Advisory Board representatives for \$500 each
- All employees entitled to member discount at IEL programs
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- Recognition as a Sustaining Member in publications

Academic/Government/Non-Profit

Membership – \$395

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- One Advisory Board representative
- Recognition as an Academic/Government/Non-Profit Member in publications

Young Arbitrator Membership – \$150

(open to young professionals under 40)

- Membership in ITA's Young Arbitrators Initiative Committee
- Free or member rate attendance at all programs and meetings of the Young Arbitrators Initiative Committee
- Free attendance at the annual Dallas Roundtable and ITA Friday Forum in Dallas
- Member discount at the annual ITA Workshop and all other ITA programs and publications
- Recognition as a Young Arbitrator Member in publications.

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