



Institute for
**TRANSNATIONAL
ARBITRATION**



2019

6/19 - 6/21

31st Annual ITA Workshop

Expect the Unexpected:
Adjudicating Changed
Circumstances in Commercial
and Treaty Arbitration

RENAISSANCE DALLAS AT
PLANO LEGACY WEST HOTEL
PLANO, TEXAS, USA

Highlights

- Keynote Speakers Prof. Dr. Klaus Peter Berger, LL.M. (Center for Transnational Law, German Arbitration Institute, Cologne) and Yas Banifatemi (Shearman & Sterling LLP, Paris)
- Oral History Luncheon Interview with Prof. George A. Bermann, ALI Restatement Chief Reporter, Columbia Law School, New York
- An exceptional international faculty
- Young Lawyers Roundtable, Welcome Reception and Conference Dinner at Legacy Hall
- Members also attend ITA Annual Meeting activities including Advisory Board Dinner Meeting, committee meetings and the ITA Forum



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AND INTERNATIONAL LAW**

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Conference Co-Chairs

Dean Céline Lévesque
Faculty of Law,
Civil Law Section
University of Ottawa
Ottawa

Tomasz J. Sikora
Senior Counsel
Exxon Mobil Corporation
Houston

Gaëtan Verhoosel
Partner
Three Crowns LLP
London

Introduction to the Workshop

While the purpose of contracts is to ensure the parties' agreements withstand the test of time, changed circumstances lie at the heart of many disputes. In this year's annual program, the ITA will explore how the challenge of changed circumstances and associated legal doctrines is addressed in contract and investment treaty arbitration. Leading international experts will provide an overview of the applicable legal doctrines, contractual mechanisms and relevant investment treaty protections. In a series of panels, preeminent practitioners will share their views and experiences of arbitrating disputes arising from changed circumstances. Leading authorities on investor-state dispute settlement will consider whether common contract and treaty investor protections should constrain (or not) the ability of States to make regulatory changes. Finally, a group of present and recent government officials will consider the host state's right to regulate in the context of international investor protections.

WiFi Sponsor: **Akin Gump**
STRAUSS HAUER & FELD LLP

Lanyard Sponsor: **Debevoise
& Plimpton**

WEDNESDAY, JUNE 19

3:00 Registration

3:30 Welcome to the Workshop

- **Joseph E. Neuhaus**, Chair, ITA Advisory Board, Sullivan & Cromwell LLP, New York

DALLAS ROUNDTABLE

*Presented by the
Young ITA*

Sponsored by: **McGUIREWOODS**

3:40 Welcome to the Roundtable and Introductions

- **Silvia Marchili**, Chair, Young ITA, White & Case LLP, Houston & Miami

3:45 A Tour Around the Arbitration World (50 min)

A group of experienced young practitioners, including some of our Regional Representatives, will present on recent developments in international arbitration in their respective jurisdictions. In an interactive discussion, our panelists will identify global trends and discuss the intricacies of practicing international arbitration across the globe.

Moderator: **Soledad O'Donnell**, Mayer Brown, Chicago

Speakers:

- **Demilade Isioma Elemo** (Africa), Young ITA Regional Chair for Africa, Folashade Alli, Lagos
- **Aditya Singh** (Asia), Young ITA Regional Chair for Asia, White & Case, Singapore
- **Saadia Bhatta** (European Union), Gide, London
- **Cristina Ferraro Delgado** (Latin America), Miranda & Amado, Lima

4:35 Change of Circumstances – A Historical Perspective (50 min)

Our panelists will give a historical overview of some of the changes in circumstances that have led to a significant number of arbitration cases in the last decades, including changes in the economic and financial situations in Argentina, Ecuador, and in the natural gas sector.

Moderator: **Silvia Marchili**, White & Case LLP, Houston & Miami

Speakers:

- **Florencia Vilaggi** (Argentina 2001), Herbert Smith Freehills, New York
- **Laura Sinisterra** (Ecuador Law 42), Debevoise & Plimpton LLP, New York
- **Miguel Nakhle** (Gas Pricing Decoupling), Compass Lexecon, Houston

5:25 Closing Remarks >

5:30-6:30 Workshop Welcome Reception at the Renaissance Dallas at Plano Legacy West Hotel

Sponsored by:  **Freshfields** **NERA**
ECONOMIC CONSULTING

6:45-9:00 Workshop Dinner - Legacy Hall at Legacy West (optional)

Please indicate on the registration form if you wish to attend – ticket price: \$70 per person.

Sponsored by: **Steptoe**

THURSDAY, JUNE 20

8:00 Registration and Continental Breakfast

9:00 Welcome Back

- **Joseph E. Neuhaus**, Chair, ITA Advisory Board
-

9:05 Introduction to the Program and Keynote

- **Gaëtan Verhoosel**, Workshop Co-Chair
-

9:10 Keynote: Changed Circumstances and Commercial Arbitration (40 min)

Professor Berger will take the audience on a comparative tour of some of the principal legal doctrines and often-used contractual mechanisms designed to address changes in circumstances.

- **Prof. Dr. Klaus Peter Berger, LL.M.**, Center for Transnational Law, German Arbitration Institute, Cologne
-

9:50 Changed Circumstances: Practical Insights from Seasoned Arbitration Counsel and Arbitrators (1 hr)

A set of seasoned practitioners will address the challenges that arbitration counsel typically face when arguing these doctrines and mechanisms in arbitration; the challenges that arbitrators typically face when resolving claims based on these doctrines and mechanisms; and the contract negotiation/drafting strategies that can avoid or mitigate those challenges.

Moderator: **Aníbal Martín Sabater**, Chaffetz Lindsey LLP, New York

Speakers:

- **Julie Bédard**, Skadden, Arps, Slate, Meagher Flom LLP, New York
 - **Paula Hodges QC**, Herbert Smith Freehills LLP, London
 - **Philippe Pinsolle**, Quinn Emanuel Urquhart Sullivan, LLP, Geneva
 - **Eduardo Zuleta**, Zuleta Abogados Asociados S.A.S, Bogotá
-

10:50 Coffee Break >

11:20 The Evolution and Challenges in Price Review Arbitration (50 min)

Two leading experts in international commodity price review arbitration will discuss the challenges inherent in arbitrating the impact of changed circumstances in long term commodity supply contracts viewed from the differing perspectives of buyers and sellers. The speakers will examine the evolution of gas and LNG price review arbitration, the interplay of price review clauses with statutory protection mechanisms and hardship doctrines and their views on the future of gas price review arbitration.

Moderator: **Tomasz J. Sikora**, Workshop Co-Chair

Speakers:

- **Marnix Leijten**, De Brauw Blackstone Westbroek, Amsterdam
 - **Peter Turner QC**, Freshfields Bruckhaus Deringer LLP, Paris
-

12:10 Luncheon > Sponsored by: **Brattle** **WHITE & CASE**
THE POWER OF ECONOMICS

A Conversation with

Prof. George A. Bermann

Jean Monnet Professor of EU Law and Walter Gellhorn Professor
Columbia Law School, New York

With

Prof. Susan D. Franck

Professor of Law
American University Washington College of Law
Washington, D.C.

This interview is the latest in a series organized by the ITA Academic Council to record the evolution of modern international arbitration in the words of those who have led it.

2:00 Introduction to the Keynote

- **Dean Céline Lévesque**, Workshop Co-Chair

2:05 Keynote: Changed Circumstances and Treaty Arbitration (35 min)

Recent cases have brought to the fore questions related to whether and the extent to which the Fair and Equitable Treatment and Expropriation standards of International Investment Agreements (IIAs) can be interpreted to constrain the ability of States to make changes to the legal framework affecting investments. Yas Banifatemi's keynote will survey and analyze recent trends, including the energy sector in Europe.

- **Yas Banifatemi**, Co-Head of International Arbitration, Shearman & Sterling LLP, Paris

2:40 Debate: Where Should the Line Be Drawn? (45 min)

Two seasoned investment arbitration practitioners will be provided with a series of hypotheticals and take turns arguing why or why not in each case investment treaties can be invoked to constrain the State's ability to introduce certain legislative or regulatory changes.

Moderator: **Gaëtan Verhoosel**, Workshop Co-Chair

Speakers:

- **Christopher Harris QC**, 3 Verulam Buildings, Gray's Inn, London
- **Michael Ostrove**, DLA Piper France LLP, Paris

3:25 Audience Q&A

3:40 Coffee Break >

Coffee Breaks Sponsored by: **pillsbury**

4:10 The Right to Regulate in International Investment Agreements: Where Are We Headed? (45 min)

Governments the world over are under pressure to further take into account the “right to regulate” in their IIAs. This round table of current and former officials of North American governments and the European Union will discuss emerging trends in recent Model BITs and investment and trade agreements (incl. the USMCA), considering both substantive and dispute resolution dimensions.

Moderator: **Dean Céline Lévesque**, Workshop Co-Chair

Speakers:

- **Samantha Atayde Arellano**, Partner, RRH Consultores, S.C., former General Counsel for International Trade, Mexican Ministry of the Economy, Mexico City
- **Shane Spelliscy**, Director and General Counsel, Trade Law Bureau, Global Affairs Canada, Ottawa
- **André Von Walter**, Directorate General for Trade, European Commission, Brussels
- **Jennifer Thornton**, former Senior Policy Advisor and Counsel in the Office of the United States Trade Representative, Washington, D.C.; Counsel, Arent Fox LLP

4:55 Audience Q&A

5:10 Concluding Remarks

- **Tomasz J. Sikora**

Canvas Bag Sponsors:



Conference Materials Sponsor:



OTHER ACTIVITIES FOR ITA ADVISORY BOARD MEMBERS AND GUESTS

THURSDAY, JUNE 20

7:45 am Young ITA Annual Meeting

6:30-8:45 pm Advisory Board Reception and Annual Dinner Meeting at The Center for American and International Law (5201 Democracy Dr., Plano, Texas)

(board buses at 6:15)

(reception 6:30-7:15)

(dinner 7:15-8:45)

Please indicate on the registration form if you wish to attend – ticket price: \$95 per person.

Sponsored by:  **ANALYSIS GROUP**
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 **GreenbergTraurig**

COVINGTON

**KING &
SPALDING**

FRIDAY, JUNE 21

7:45 ITA Americas Initiative Annual Meeting

9:00 ITA Forum

10:15 Break >

10:45 ITA Forum, cont.

The ITA Forum is an informal, off-the-record discussion of current developments and concerns in international arbitration among ITA members, Workshop faculty, and special guests. The agenda for this open discussion is determined by the participants. Please [click here](#) to submit your questions or topics in advance for discussion at the Forum.

12:00 Adjourn >



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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.

JOIN ITA >
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REGISTRATION

31ST ANNUAL ITA WORKSHOP

June 19-21, 2019 • Renaissance Dallas at Plano Legacy West Hotel • Plano, Texas, USA

Workshop registration includes the Dallas Roundtable, Welcome Reception, Workshop, luncheon and course materials.

Members of the Advisory Board, Executive Committee, Academic Council, ITA Arbitration Report Board of Reporters, ITA-in-Review Board of Editors, Young ITA and ITAFOR Moderators and Contributors should register using the special link that will be sent to them by email instead of the form below. If you did not receive the e-mail, please contact Veronique Fally at vfally@cailaw.org or +1.972.244.3414.

Check applicable box:	Received by 6/3/19	Received after 6/3/19
Regular registration fee	<input type="checkbox"/> \$645	<input type="checkbox"/> \$695
ITA Supporting or Sustaining Member Employee	<input type="checkbox"/> \$445	<input type="checkbox"/> \$495
CAIL Member or Member Employee	<input type="checkbox"/> \$445	<input type="checkbox"/> \$495
Full-Time Government Employee	<input type="checkbox"/> \$345	<input type="checkbox"/> \$395
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Full-Time Academic Employee	<input type="checkbox"/> \$345	<input type="checkbox"/> \$395
SWIICL Advisory Board Member	<input type="checkbox"/> \$250	<input type="checkbox"/> \$250
Full-Time Student	<input type="checkbox"/> \$125	<input type="checkbox"/> \$150
Full-Time Student – June 19 Only	<input type="checkbox"/> \$25	<input type="checkbox"/> \$35
Full-Time Student – Audit Only	<input type="checkbox"/> \$0	<input type="checkbox"/> \$0

- \$70 - I will attend the Workshop Dinner on June 19 at Legacy Hall at Legacy West.
 \$70 - I wish to bring a guest to the Workshop Dinner on June 29 at Legacy Hall at Legacy West.**

REGISTRATION ROSTER: Your name & contact information will be included on the Registration Roster, unless you indicate otherwise below.

- Include only my name & employer/company's name on the roster.
 Do not include my name & contact information on the roster

Name _____

Title _____

Firm/Company/Organization _____

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City, State, Postal Code, Country _____

Phone _____ Fax _____

Email _____

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

Guest Name (name, title, company, city, state) _____

PAYMENT INFORMATION

Check enclosed payable to: The Center for American and International Law

Credit Card: Mastercard Visa AMEX Discover

Card number _____ Exp date _____ CSC _____

Name on card _____

Billing address (if different than above address) _____

Signature _____

GENERAL INFORMATION

CANCELLATION POLICY: Tuition less a \$50 cancellation fee will be refunded upon receipt of written cancellation received by June 3, 2019. Email kjohnson@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.

NONDISCRIMINATION POLICY: The Center for American and International Law does not discriminate on the basis of race, color, sex, religion, national origin, age, disability, veteran status or any other protected status in educational activities, scholarship programs or admissions.

HOTEL INFORMATION: The cost of housing is not included in tuition. However, rooms (in limited number) have been reserved at the Renaissance Dallas at Plano Legacy West, 6007 Legacy Drive, Plano, TX 75024. Rooms are available the nights of 6/18/19 - 6/21/19 for the event, with limited availability before and after. Registrants should call 1-800-468-3571 and reference "ITA" as the code to receive a reduced rate of \$229 + tax per night. The last day to obtain this special rate is May 28, 2019.

MCLE CREDIT: This program is approved by the State Bar of Texas for a total of 6.25 hours, no ethics. Course ID Number: 174047529. Credit hours for other states will vary and are subject to each state's approval and credit rounding rules.

For this conference, ITA will directly apply (if requested) for course accreditation in the following states: California, Louisiana, 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. Attorneys filing by self-submission in certain states may be required to pay an additional fee. SWIICL conferences are typically accredited by all mandatory CLE states.

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3 WAYS TO REGISTER

Payment must accompany registration.

- **ONLINE**
credit card only
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The Center for American and International Law
5201 Democracy Dr.
Plano, Texas 75024
- **PHONE**
credit card only
972.244.3404 or
800.409.1090
8:30am-5:00pm CT



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The Center for American and International Law
5201 Democracy Drive
Plano, TX USA 75024

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MCLE credit will be available